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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Willen *et al.*

Appl. No. 10/705,758

Filed: November 12, 2003

For: **System, Method, and Computer
Program Product for Forecasting
Weather-Based Demand Using
Proxy Data**

Confirmation No. 4262

Art Unit: 3621

Examiner: *To Be Assigned*

Atty. Docket: 1481.0100006
(formerly 1481.0290000)

Petition Under 37 C.F.R. § 1.47(a)

Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the requirements of 35 U.S.C. § 116, 37 C.F.R. § 1.47(a), and M.P.E.P. § 409.03, Petitioners have filed herewith the following documents:

- (1) a copy of the original Declaration for Patent Application by inventors Mr. Michael A. Willen, Mr. David G. Estornell, Mr. Eli H. Miller, and Mr. Paul E. Walsh with the signature block for Mr. William E. Kirk left blank; and
- (2) a sworn Statement of Facts in Support of Filing on Behalf of a Nonsigning Inventor Under 37 C.F.R. § 1.47(a) (hereafter referenced as "Statement of Facts") signed by Ms. Marianne McLaughlin, Esq., General Counsel for Planalytics, Inc., which confirms her firsthand knowledge of

the facts related to the efforts to obtain a signed Declaration from Mr. Kirk, and states the last known address of Mr. Kirk.

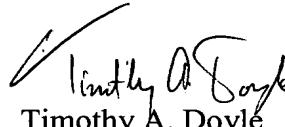
The Declaration for Patent Application has been signed by four of the five named joint inventors. Mr. Kirk has not executed the Declaration for Patent Application. As provided for at M.P.E.P. § 409.03(a)(A), Petitioners submit that the Declaration for Patent Application, signed by Mr. Michael A. Willen, Mr. David G. Estornell, Mr. Eli H. Miller, and Mr. Paul E. Walsh with the signature block for Mr. William E. Kirk left blank, should be considered as having been signed by all the joint inventors on behalf of the nonsigning inventor. The Statement of Facts: (1) provides the circumstances surrounding the presentation of the application papers to the nonsigning inventor; (2) presents pertinent facts evidencing the nonsigning inventor's refusal to join the application; and (3) states the last known addresses of the nonsigning inventor. Petitioners submit that the this document, including its attachments, meets the requirements of M.P.E.P. §§ 409.03(a), (d) and (e).

When a nonsigning inventor gives a reason for refusing to join the application, M.P.E.P. § 409.03(d) requires that the reason be stated in the Petition Under 37 C.F.R. § 1.47(a). The Statement of Facts provides evidence that, because of current litigation between the nonsigning inventor and Planalytics, Inc., the legal representative of the nonsigning inventor is not in a position to allow the nonsigning inventor to respond substantively to the request to execute the Declaration form. The specific facts evidencing this are set forth in the Statement of Facts being filed herewith.

Based upon the documents and fees filed herewith, Petitioners respectfully submit that all the requirements of 35 U.S.C. § 116, 37 C.F.R. § 1.47(a), and M.P.E.P. § 409.03 have been satisfied. Accordingly, Petitioners respectfully request that this Petition Under 37 C.F.R. § 1.47(a) be granted and that the enclosed Declaration be accepted.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.


Timothy A. Doyle
Attorney for Petitioners
Registration No. 51,262

Date: 23 JUN 04

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600



Declaration for Patent Application

Docket Number: 1481.0100006/PEG/TAD

As a below named inventor, I hereby declare that:

My residence, mailing address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter that is claimed and for which a patent is sought on the invention entitled **System, Method, and Computer Program Product for Forecasting Weather-Based Demand Using Proxy Data**, the specification of which is attached hereto unless the following box is checked:

was filed on November 12, 2003;
as United States Application Number or PCT International Application Number 10/705,758; and
was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information that is material to patentability as defined in 37 C.F.R. § 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or (f) or § 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or § 365(a) of any PCT international application, which designated at least one country other than the United States of America, listed below, and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Applications(s):			Priority Claimed
(Application No.)	(Country)	(Day/Month/Year Filed)	<input type="checkbox"/> Yes <input type="checkbox"/> No
(Application No.)	(Country)	(Day/Month/Year Filed)	<input type="checkbox"/> Yes <input type="checkbox"/> No

Send Correspondence to: STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934

Direct Telephone Calls to: (202) 371-2600

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first Inventor:	Michael A. Willen
Signature of first Inventor:	Date:
Residence:	Thorndale, Pennsylvania
Citizenship:	United States
Mailing Address:	231 Thornridge Drive Thorndale, Pennsylvania, 19372

Full name of second Inventor:	David G. Estornell
Signature of second Inventor:	Date:
Residence:	Lincoln University, Pennsylvania
Citizenship:	United States
Mailing Address:	1005 Wyoming Circle Lincoln University, Pennsylvania, 19352

Full name of third Inventor:	William E. Kirk
Signature of third Inventor:	Date:
Residence:	Easton, Pennsylvania
Citizenship:	United States
Mailing Address:	21 Chestnut Ridge Circle Easton, Pennsylvania, 18042

Full name of fourth Inventor:	Eli H. Miller
Signature of fourth Inventor:	
Date:	
Residence:	Sumneytown, Pennsylvania
Citizenship:	United States
Mailing Address:	P.O. Box 203 Sumneytown, Pennsylvania, 18084

Full name of fifth Inventor:	Paul E. Walsh
Signature of fifth Inventor:	
Date:	
Residence:	Downington, Pennsylvania
Citizenship:	United States
Mailing Address:	104 Elmwood Drive Downington, Pennsylvania, 19335

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ASSIGNMENT

In consideration of the sum of One Dollar (\$1.00) or equivalent and other good and valuable consideration paid to each of the undersigned inventors: (1) **Michael A. Willen**, (2) **David G. Estornell**, (3) **William E. Kirk**, (4) **Eli H. Miller** and (5) **Paul E. Walsh**, the undersigned inventors hereby sell and assign to **Planalytics, Inc.**, a corporation formed under the laws of Pennsylvania (the Assignee) his/her entire right, title and interest, including the right to sue for past infringement and to collect for all past, present and future damages, for the United States of America (as defined in 35 U.S.C. § 100) and throughout the world,

- (a) in the invention(s) known as **System, Method, and Computer Program Product for Forecasting Weather-Based Demand Using Proxy Data** for which application(s) for patent in the United States of America has (have) been executed by the undersigned on (1)_____, (2)_____, (3)_____, (4)_____ and (5)_____ (also known as United States Application No. 10/705,758, filed November 12, 2003), in any and all applications thereon, in any and all Letters Patent(s) therefor, and
- (b) in any and all applications that claim the benefit of the patent application listed above in part (a), including non-provisional applications, continuing (continuation, divisional, or continuation-in-part) applications, reissues, extensions, renewals and reexaminations of the patent application or Letters Patent therefor listed above in part (a), to the full extent of the term or terms for which Letters Patents issue, and
- (c) in any and all inventions described in the patent application listed above in part (a), and in any and all forms of intellectual and industrial property protection derivable from such patent application, and that are derivable from any and all continuing applications, reissues, extensions, renewals and reexaminations of such patent application, including, without limitation, patents, applications, utility models, inventor's certificates, and designs together with the right to file applications therefor; and including the right to claim the same priority rights from any previously filed applications under the International Agreement for the Protection of Industrial Property, or any other international agreement, or the domestic laws of the country in which any such application is filed, as may be applicable;

all such rights, title and interest to be held and enjoyed by the above-named Assignee, its successors, legal representatives and assigns to the same extent as all such rights, title and interest would have been held and enjoyed by the Assignor had this assignment and sale not been made.

The undersigned inventors agree to execute all papers necessary in connection with the application(s) and any non-provisional, continuing (continuation, divisional, or continuation-in-part), reissue, reexamination or corresponding application(s) thereof and also to execute separate assignments in connection with such application(s) as the Assignee may deem necessary or expedient.

The undersigned inventors agree to execute all papers necessary in connection with any interference or patent enforcement action (judicial or otherwise) related to the application(s) or any non-provisional, continuing (continuation, divisional, or continuation-in-part), reissue or reexamination application(s) thereof and to cooperate with the Assignee in every way possible in obtaining evidence and going forward with such interference or patent enforcement action.

The undersigned inventors hereby represent that he/she has full right to convey the entire interest herein assigned, and that he/she has not executed, and will not execute, any agreement in conflict therewith.

The undersigned inventors hereby grant Robert Greene Sterne, Esq., Registration No. 28,912; Edward J. Kessler, Esq., Registration No. 25,688; Jorge A. Goldstein, Esq., Registration No. 29,021; David K.S. Cornwell, Esq., Registration No. 31,944; Robert W. Esmond, Esq., Registration No. 32,893; Tracy-Gene G. Durkin, Esq., Registration No. 32,831; Michele A. Cimbala, Esq., Registration No. 33,851; Michael B. Ray, Esq., Registration No. 33,997; Robert E. Sokohl, Esq., Registration No. 36,013; Eric K. Steffe, Esq., Registration No. 36,688; Michael Q. Lee, Esq., Registration No. 35,239; Steven R. Ludwig, Esq., Registration No. 36,203; John M. Covert, Esq., Registration No. 38,759; Linda E. Alcorn, Esq., Registration No. 39,588; Lawrence B. Bugaisky, Esq., Registration No. 35,086; Donald J. Featherstone, Esq., Registration No. 33,876; Robert C. Millonig, Esq., Registration No. 34,395; Michael V. Messinger, Esq., Registration No. 37,575; Judith U. Kim, Esq., Registration No. 40,679; Timothy J. Shea, Jr., Esq., Registration No. 41,306; Patrick E. Garrett, Esq., Registration No. 39,987; all of STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C., 1100 New York Avenue, N.W., Washington, D.C. 20005-3934, power to insert in this assignment any further identification that may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

IN WITNESS WHEREOF, executed by the undersigned inventors on the date opposite his/her name.

Date: _____ Signature of Inventor: _____
Michael A. Willen

Date: _____ Signature of Inventor: _____
David G. Estornell

Date: _____ Signature of Inventor: _____
William E. Kirk

Date: _____ Signature of Inventor: _____
Eli H. Miller

Date: _____ Signature of Inventor: _____
Paul E. Walsh

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Willen *et al.*

Appl. No. 10/705,758

Filed: November 12, 2003

For: **System, Method, and Computer
Program Product for Forecasting
Weather-Based Demand Using
Proxy Data**

Confirmation No. 4262

Art Unit: 3621

Examiner: *To Be Assigned*

Atty. Docket: 1481.0100006
(formerly 1481.0290000)

Statement of Facts in Support of Filing on Behalf of a Nonsigning Inventor Under 37 C.F.R. § 1.47(a)

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

I, Marianne McLaughlin, Esq., hereby declare:

1. I am making this statement of facts in support of filing on behalf of a nonsigning inventor under 37 C.F.R. § 1.47(a) with regards to U.S. Patent Application No. 10/705,758, filed: November 12, 2003.
2. I am the General Counsel for Planalytics, Inc., 1325 Morris Drive, Suite 201, Wayne, Pennsylvania 19087 (hereinafter referred to as "Planalytics").
3. Planalytics provides computer-based products and consulting services to organizations so that they can better understand and address the impact that weather has had and will have on their activities with regards to economic risks, costs, and profitability.
4. Mr. Michael A. Willen, Mr. David G. Estornell, Mr. William E. Kirk, Mr. Eli H. Miller, and Mr. Paul E. Walsh are named as inventors in the present patent application.
5. Mr. Kirk is no longer employed by Planalytics. His last known address as of June 23, 2004, is: 21 Chestnut Ridge Circle, Easton, Pennsylvania 18042.
6. I have firsthand knowledge of the facts relating to the efforts to contact Mr. Kirk with regards to having him join the patent application by executing a declaration.

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Willen et al.

Appl. No. 10/705,758

7. Mr. Kirk was employed by Planalytics from May 5, 1997 to September 27, 2002. Planalytics and Mr. Kirk are parties to an Employment Letter Agreement dated April 30, 1997, which Mr. Kirk countersigned on May 2, 1997. A copy of this agreement is attached hereto as Exhibit A.
8. Planalytics has a reasonable belief that Mr. Kirk has misappropriated information that Planalytics has maintained as a trade secret.
9. On September 16, 2003, Planalytics filed Civil Action No. 03-5211 (CMR) against Mr. Kirk and others in the United States District Court for the Eastern District of Pennsylvania (hereinafter referred to as "the Litigation"). A copy of the complaint is attached hereto as Exhibit B.
10. Planalytics is represented by the law firm of Morgan Lewis & Bockius LLP, 101 Park Avenue, New York, New York 10178 (hereinafter referred to as "MLB").
11. Mr. Joshua Paul, Esq. is a partner in the law firm of MLB.
12. Mr. Kirk is currently represented by the law firm of Drinker, Biddle & Reath LLP, One Logan Square, 18th and Cherry Streets, Philadelphia, Pennsylvania 19103 (hereinafter referred to as "DBR").
13. Mr. Gregg Melinson, Esq. is a partner and Mr. Allen Harberg, Jr., Esq. is an associate in the law firm of DBR.
14. Employees of Planalytics have developed a novel system, method, and computer program product for forecasting weather-based demand using proxy data. This invention is the subject of the present patent application.
15. For patent law matters, Planalytics is represented by the law firm of Sterne, Kessler, Goldstein & Fox P.L.L.C., 1100 New York Avenue, N.W., Washington, D.C. 20005 (hereinafter referred to as "SKGF").
16. Mr. Patrick E. Garrett, Esq., is a director in the law firm of SKGF.
17. The present patent application was filed on November 12, 2003.
18. On February 11, 2004, a Notice to File Missing Parts of Application - Filing Date Granted was issued in the present patent application identifying the oath or declaration, the statutory filing fee, and the late oath or declaration surcharge as missing from the patent application.
19. In reviewing records to determine inventorship of the present invention, Planalytics recognized that work performed by Mr. Kirk while he was employed by Planalytics may qualify him as a joint inventor.
20. On June 8, 2004, at my direction, Mr. Garrett sent, via Federal Express, a letter to Mr. Melinson forwarding a copy of the patent application (including a written description, drawings, and claims), a Declaration

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Willen et al.

Appl. No. 10/705,758

form and an Assignment form. This letter was sent to Mr. Melinson instead of Mr. Kirk because Mr. Melinson is Mr. Kirk's attorney for the pending litigation. In the letter, Mr. Melinson was reminded of Mr. Kirk's duties under the Employment Letter Agreement. Also in the letter, Mr. Kirk was asked to review the patent application and then to review and to sign the declaration and assignment documents. A copy of this letter (including the attached patent application, Declaration form, and Assignment form) is attached hereto as Exhibit C.

21. On June 9, 2004, Mr. Garrett received, via facsimile, a letter from Mr. Harberg requesting clarification of the relationship between the present patent application and the Litigation. A copy of this letter is attached hereto as Exhibit D.
22. On June 14, 2003, Mr. Paul sent, via facsimile, a letter to Mr. Harberg providing clarification of the relationship between the present patent application and the Litigation. A copy of this letter is attached hereto as Exhibit E.
23. On June 16, 2004, Mr. Harberg sent, via facsimile, a letter to Mr. Paul stating that, due to the potential impact that the present patent application may have on the Litigation, DBR is "not in a position to allow Mr. Kirk to respond substantively to Mr. Garrett's request." A copy of this letter is attached hereto as Exhibit F.
24. On June 23, 2004, Mr. Paul sent, via facsimile, a letter to Mr. Harberg stating that Planalytics is of the position that Mr. Kirk remains obligated, under his Employment Letter Agreement, to execute the Declaration and Assignment, and notifying DBR that Planalytics intends to attempt to prosecute the present patent application without an executed Declaration from Mr. Kirk in light of his position as represented by DBR. A copy of this letter is attached hereto as Exhibit G.

I declare that all statements made herein of my own knowledge are true and that all statements made on information from review of the file history of the patent application are believed to be true, and further that these statements were made with the knowledge that willful false statements or the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent application or any patent issued thereon.

Respectfully submitted,


Marianne McLaughlin

Date: June 23, 2004



ATTORNEYS AT LAW



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Edward J. Kessler
Jorge A. Goldstein
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Marvin C. Guthrie
*Admitted only in Maryland
•Admitted only in Virginia
•Practice Limited to
federal Agencies

June 8, 2004

WRITER'S DIRECT NUMBER:

(202) 772-8587

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FILE COPY

Gregg Melinson, Esq.
DRINKER BIDDLE & REATH LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Via Federal Express

Re: William E. Kirk / U.S. Patent Application No. 10/705,758
Filed: November 12, 2003
For: **System, Method, and Computer Program Product for
Forecasting Weather-Based Demand Using Proxy Data**
Inventors: Willen *et al.*
Our Ref: 1481.0100006/PEG/TAD

Dear Mr. Melinson:

We are patent counsel for Planalytics, Inc. ("Planalytics"). This letter is a private and confidential communication from Planalytics to William E. Kirk, a former employee of Planalytics. We have addressed the letter to you, rather than to Mr. Kirk himself, because we know that your law firm represents Mr. Kirk in civil litigation with Planalytics that is pending in the U.S. District Court for the Eastern District of Pennsylvania (the "Litigation").^{1/}

Planalytics and Mr. Kirk are parties to an Employment Letter Agreement dated April 30, 1997, which Mr. Kirk countersigned on May 2, 1997. Under the Agreement (at p. 5), and consistent with substantive law,

all ideas, processes, concepts, inventions, works of authorship and improvement (enhancements) coming within the scope of the Company's business or relating to any work carried on by the Company or to any problems specifically assigned to you [viz., Mr. Kirk], which are conceived, made, reduced to practice, or fixed in any tangible medium of expression by you alone or with others during your employment . . . and all intellectual property

^{1/}

Planalytics v. Kirk et al., Civil Action No. 03-5211 (CMR).

Gregg Melinson, Esq.
June 8, 2004
Page 2

rights in the same (patent, copyright, trade secret, trademark, contract) shall be the sole and exclusive property of the Company worldwide.^{2/}

Mr. Kirk's employment agreement with Planalytics further requires that, during the term of his employment and thereafter, Mr. Kirk "cooperate fully" with Planalytics in connection with the company's efforts to obtain patents or otherwise protect its intellectual property rights. Among other things, the Agreement (p. 6) requires Mr. Kirk to "execute all documents and do all things necessary or proper to obtain letters, patent or copyright registration and to vest the company with full title thereto." Among other actions required of Mr. Kirk by the Agreement is the requirement that, on request, he execute assignments of any and all patent rights in favor of Planalytics.

It is against this background that we are forwarding to Mr. Kirk through his counsel today the enclosed patent application, captioned "System, Method, and Computer Program Product for Forecasting Weather-Based Demand Using Proxy Data." We filed the patent application on Planalytics' behalf with the United States Patent and Trademark Office ("Patent Office") on November 12, 2003. We are forwarding the application to Mr. Kirk because it is our initial understanding that he, along with others, is an inventor of its subject matter.

We ask that Mr. Kirk review the application carefully to ensure that, to his knowledge, the application fully and accurately describes the invention. We provide the following brief description of the parts of the patent application and the enclosed Declaration and Assignment to assist you and Mr. Kirk in reviewing the same.

- The patent application contains the following sections: Background of the Invention, Brief Summary of the Invention, Brief Description of the Figures, Detailed Description of the Invention, Claims, and Abstract of the Disclosure.
- The Background of the Invention section identifies and describes the problem which is solved by the invention. This section also describes conventional solutions to the problem and the shortcomings of such solutions.
- The Brief Summary of the Invention section briefly describes the structure and operation of the invention.

^{2/} The Agreement provides, as well, that "[a]ll inventions involving long-range weather forecasting . . . in any way conceived, made and/or reduced to practice by you [viz., Mr. Kirk] during your employment or for one year thereafter shall belong to the Company" (Agreement, p. 3).

Gregg Melinson, Esq.
June 8, 2004
Page 3

- The Brief Description of the Figures section briefly describes the figures.
- The Detailed Description of the Invention section describes the structure and operation of the invention in detail. From a legal perspective, it is critical that this section satisfy the following requirements: (1) it must **adequately describe** the invention; (2) it must **enable** a person skilled in the relevant art to make and use the claimed invention; and (3) it must set forth the **best mode** for carrying out the claimed invention.
- The Claims identify the protected subject matter of a patent. The claims of a patent are analogous to the legal description of a real property deed. Both precisely set out the scope of legal protection afforded by the document.
- The Abstract of the Disclosure section presents a one paragraph summary of the invention.
- The figures graphically depict the structure and operation of the invention.

If, after reviewing the enclosed patent application, Mr. Kirk believes that the application should not identify him as an inventor, we ask that you so inform us immediately. We note that determining inventorship is a legal matter which depends on the invention being claimed.

It is our understanding that to date Mr. Kirk has not described this technology in any printed publication or publicly used this invention or offered it for sale more than one year prior to the filing date of the present patent application (November 12, 2003). These events would start a one year clock in which the application would need to be filed at the Patent Office. If our understanding is incorrect, please contact us immediately.

If the application meets with Mr. Kirk's approval, then we request that he then execute and return to us (for filing in the application) the enclosed Declaration and Assignment – both as more fully described below.

1. **Declaration.** Please have Mr. Kirk carefully review the Declaration and any information that we have entered onto it and fill in any missing information in blue ink. By "residence" address is meant the city and state of residence. The "mailing" address is the (full) address at which Mr. Kirk customarily receives mail; either his home or business address is acceptable as a mailing address. After Mr. Kirk has completed the review of the patent application and Declaration, and if the information in the Declaration is correct and complete, please **sign** and **date** the Declaration in blue ink where indicated. If any corrections are made, please initial and date the corrections in the margin.

Gregg Melinson, Esq.
June 8, 2004
Page 4

2. **Assignment.** Please have Mr. Kirk carefully review the Assignment document, under which Mr. Kirk inter alia assigns all his right, title and interest to Planalytics. In the body of the Assignment, in the blank space after the words "... executed by the undersigned on ____" please enter the date that Mr. Kirk signed the **Declaration** in the blank space after the number (3). Then, Mr. Kirk should sign and date the bottom of the Assignment document in blue ink.

Every person who signs a document that is submitted to the USPTO makes a certification under 37 C.F.R. § 10.18(b). A copy of 37 C.F.R. § 10.18(b) and (c) is attached. Please review this rule.

Please return the enclosed application (including the drawings) and the executed formal documents to us so that we may file them with the Patent Office. Please use an overnight courier, such as Federal Express, to send these papers to us.

A duty of disclosure continues throughout the entire patent application process, and ends only with the actual issuance of a patent. Therefore, if anyone substantively involved in the patent application process becomes aware of information that might be considered material, please forward it to us immediately. If there is information to submit, Patent Office rules provide certain advantages to the applicant if the information is submitted before the examiner issues an office action on the merits.

Also, this application will be published approximately 18 months from its earliest U.S. filing date. If the invention has not been and will not be the subject of an application filed in another country (or under international agreement) that requires eighteen-month publication, then the applicant can request that the application not be published.

Finally, we note that this communication and the enclosed documents do not relate to the subject matter of the Litigation. The patent application that is the subject of this letter was filed under seal with the Patent Office in accordance with federal law, and Planalytics regards the substance of the application as confidential and proprietary. Therefore, even though your law firm represents parties in the Litigation other than Mr. Kirk,^{3/} your law firm is not authorized to discuss or disclose the enclosed patent application with any party other than Mr. Kirk himself. Mr. Kirk, of course, is obligated to maintain the confidentiality of the patent application pursuant to the terms of his employment agreement with Planalytics.

^{3/}

We understand that your firm represents all of the defendants in the Litigation – including Mr. Kirk, John Grum, Kirk Holding Company Inc., Weather Trends, Inc., Surveillance Data Inc. and SDI/Weather Trends Inc.

Gregg Melinson, Esq.
June 8, 2004
Page 5

Please contact us if you have any questions or comments regarding the foregoing.

Very truly yours,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Patrick E. Garrett

cc: Joshua Paul, Esq.
Morgan Lewis & Bockius (w/o encls.)(via mail)

PEG/slw
Enclosures

273527_1.DOC



Drinker Biddle & Reath LLP

Allen Harberg, Jr.
215-988-2755

**One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
215-988-2700**

FACSIMILE INFORMATION SHEET

Patrick E. Garrett (Phone: 202-772-8587)
(Fax: 202-371-2540)

FROM: Allen Harberg, Jr.

DATE: June 16, 2004

DOCUMENT: 6/16/04 letter to JPaul

NUMBER OF PAGES (INCLUDING COVER): 3

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Allen Harberg, Jr.
215-988-2755
allen.harberg@dbr.com

June 16, 2004

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FACSIMILE
Joshua Paul, Esquire
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060

Re: Planalytics, Inc. v. William E. Kirk, et al.,
Civil Action No. 03-5211

Dear Josh:

Thanks for your letter of June 14, regarding my request for written assurances that: (1) the "758 Application" does not relate to the Weather Trend Rules, and (2) Planalytics will not seek to use the 758 Application, or correspondence relating thereto, in this litigation. As you are aware, it is our position that Planalytics' conduct has discharged Mr. Kirk from putative obligations his employment agreement purports to impose upon him – such as those referenced in Mr. Garrett's letter. That said, in the spirit of good faith, we would be willing at least to share the 758 Application with Mr. Kirk and discuss the substance of Mr. Garrett's request – if you are able to give us the assurance we seek with respect to the above two points. Because you are presently not able to give us any assurances at all, however, we are not in a position to discuss with Mr. Kirk the substance of Planalytics' request under the terms that Mr. Garrett demanded in his original letter.

In particular, Mr. Garrett asked us to share the 758 Application with Mr. Kirk – but not with any of our other clients. We cannot agree to do that when the 758 Application – and any response by Mr. Kirk to Mr. Garrett's correspondence – may potentially implicate aspects of your case against all our clients. Indeed, if the 758 Application relates in some way to the "Weather Trend Rules," it is hard to imagine how a response by Mr. Kirk would not implicate aspects of this litigation. Moreover, you go so far as to explicitly state that Mr. Garrett's letter, and any response by Mr. Kirk, may well become relevant to Planalytics' lawsuit against all our clients – depending upon the substance of Mr. Kirk's response. If that is the case, then we should be permitted to confer with our clients regarding this matter, pursuant to the terms of the Protective Order. Because you are trying to limit communications with our clients in a manner inconsistent with the Protective Order, we are not in a position to allow Mr. Kirk to respond substantively to Mr. Garrett's request.

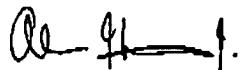
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DrinkerBiddle&Reath

Joshua Paul, Esquire
June 16, 2004
Page 2

Perhaps we can revisit this issue further once we have conducted the "settlement purposes only" document exchange. In the meantime, Gregg and I are, as always, available to discuss these issues further at your convenience.

Best regards,



Allen Harberg, Jr.

AH:jr:kk

cc: Patrick E. Garrett, Esquire (Facsimile)
Gregg R. Melinson, Esquire



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Morgan Lewis
COUNSELORS AT LAW

Joshua Paul
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jpaul@morganlewis.com
eFax: 877.432.9652

June 23, 2004

VIA FACSIMILE 215-988-2757

Allen Harberg, Jr., Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

Re: William E. Kirk / U.S. Patent Application No. 10/705,758

Dear Allen:

Thank you for your letter of June 16. Without at this juncture responding substantively to your letter, I am inclined to agree with your suggestion that we table the issues for now and revisit them later this summer – after the parties have had an opportunity to digest the “settlement purposes only” documents exchanged today in the context of the pending civil action.

So that there is no misunderstanding, I want you to understand how we intend to proceed in connection with the ‘758 Application (which Patrick Garrett sent to Gregg Melinson under cover of a letter dated June 8, 2004).

First, regardless of whether the ‘758 Application is or is not “related to” the pending litigation, I infer from our exchange of correspondence that your firm’s representation of Mr. Kirk encompasses the subject of Mr. Garrett’s June 8 letter – including Mr. Garrett’s request that Mr. Kirk review the ‘758 Application and that Mr. Kirk then execute the Assignment and Declaration accompanying the June 8 letter. I infer, as well, that we do not have your permission to communicate directly with Mr. Kirk about these matters.

New York Philadelphia Washington Los Angeles San Francisco Miami Pittsburgh Princeton
Chicago Palo Alto Harrisburg Irvine Boston London Paris Brussels Frankfurt Tokyo

I-NY/1791953.2

Allen Harberg, Jr., Esquire
June 23, 2004
Page 2

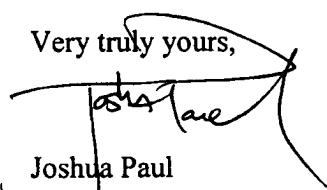
Morgan Lewis
COUNSELORS AT LAW

Second, assuming my understandings as set forth in the preceding paragraph are correct^{1/}, in order to maintain the '758 Application – and to avoid a potential forfeiture of rights – Planalytics must at this juncture either provide the Patent Office with Mr. Kirk's signed Declaration and Assignment or explain to the Patent Office the steps Planalytics has taken to secure the same from Mr. Kirk. Accordingly, under the circumstances Planalytics will notify the Patent Office that it has endeavored – so far without success – to cause Mr. Kirk to review the '758 Application and to sign the Declaration and Assignment. We will provide Mr. Kirk's contact information to the Patent Office and we expect that the Patent Office will at some point communicate directly with him.

Third, I want to reiterate Planalytics' position that Mr. Kirk is contractually and otherwise obligated to review the '758 Application, execute the Assignment and Declaration, and otherwise comply with the requests set forth in Mr. Garrett's June 8 letter. We believe that Mr. Kirk's failure to do so would give rise to one or more independent causes of action against him by Planalytics. Planalytics reserves all rights and remedies in any such event.

Finally, I also want to reiterate Planalytics' position that, inasmuch as the '758 Application was filed under seal with the Patent Office in accordance with federal law, and given our position with respect to Mr. Kirk's ongoing responsibilities under his employment agreement with Planalytics, neither your law firm nor Mr. Kirk are authorized to disclose the Application or its contents to any person other than Mr. Kirk. Whether you and Mr. Kirk agree is your own business, and I see no point in our debating this issue at this juncture. But I do want at least to make sure that I have made a clear record of Planalytics' position on this issue.

Very truly yours,


Joshua Paul

c: Gregg R. Melinson, Esquire
Patrick E. Garrett, Esquire

^{1/} Please let me know immediately if my understanding is incorrect in any respect.



Drinker Biddle & Reath LLP

**Allen Harberg, Jr.
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FACSIMILE INFORMATION SHEET

Joshua Paul (Phone: 212-309-6087)
(Fax: 212-309-6273)

FROM: Allen Harberg, Jr.

DATE: June 9, 2004

DOCUMENT: letter

NUMBER OF PAGES (INCLUDING COVER): 2

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DrinkerBiddle&Reath

Allen Harberg, Jr.
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June 9, 2004

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Patrick E. Garrett, Esquire
Steine, Kessler, Goldstein & Fox P.L.L.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005

Re: Planalytics, Inc. v. William E. Kirk, et al.,
Civil Action No. 03-5211

Dear Mr. Garrett:

I work with Gregg Melinson on the above-captioned case, and I have reviewed your letter of June 8. Before we consider with Mr. Kirk the substance of the letter, we would request clarification of a few points.

First, you state in the letter that "this communication and the enclosed documents do not relate to the subject matter of the Litigation." Based on the above statement, I take it that Mr. Paul (who is copied on your letter) has told you what the "Litigation" is about. Specifically, I assume you are aware that Planalytics has claimed that the Litigation involves what it refers to as the "Weather Trend Rules." Planalytics has not divulged the substance of the "Weather Trend Rules" in the Litigation. Nonetheless, based on your above-quoted statement, I assume that the materials you sent us do not in any way describe, depict or otherwise "relate to" the "Weather Trend Rules" in any form or fashion. Please confirm the same in writing at your earliest convenience.

In addition, please confirm also that Planalytics will not seek to use your letter of June 8, the materials enclosed with that letter, nor any other correspondence relating to those materials in the Litigation.

Thank you for your cooperation.

Very truly yours,

Allen Harberg, Jr.

A.Hjr:kk

cc: Gregg R. Melinson, Esquire
Joshua Paul, Esquire (Facsimile)

Established
1849

FROM

(MON) 6.14' 04 15:54/ST. 15:53/NO. 4800000239 P 2

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June 14, 2004

VIA FACSIMILE AND MAIL 215-988-2757

Allen Harberg, Jr., Esquire .
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

Re: William E. Kirk / U.S. Patent Application No. 10/705,758

Dear Allen:

Your letter of June 9 to Patrick Garrett of the Sterne, Kessler law firm has been referred to me for response. Your letter seeks various written assurances arising out of Mr. Garrett's letter of the previous day – June 8, 2004 – to your colleague Gregg Melinson pertaining to the above-referenced patent application (the “758 Application”). In particular, you have asked for Planalytics’ written assurances that (a) the ‘758 Application does “not in any way describe, depict or otherwise ‘relate to’ the ‘Weather Trend Rules’ in any form of fashion” and (b) Planalytics “will not seek to use” Mr. Garrett’s June 8 letter or the ‘758 Application in the context of the litigation that is now pending in the Eastern District of Pennsylvania.

Planalytics is not in a position to provide you with the broadly-phrased and unqualified assurances you seek. The statement in Mr. Garrett’s June 8 letter (*viz.*, “. . . this communication and the enclosed documents do not relate to the subject matter of the Litigation”) stands on its own and serves *inter alia* as the basis for Planalytics’ position that neither Mr. Kirk nor your law firm may disclose the ‘758 Application or its contents to SDI or any other person other than Mr. Kirk. Further, the specifics of Mr. Kirk’s response (or lack of response) to Mr. Garrett’s June 8 letter will largely determine the extent to which the letter may become relevant in the presently-pending civil action or in any future civil action between Planalytics and Mr. Kirk.

New York Philadelphia Washington Los Angeles San Francisco Miami Pittsburgh Princeton
Chicago Palo Alto Harrisburg Irvine Boston London Paris Brussels Frankfurt Tokyo

FROM

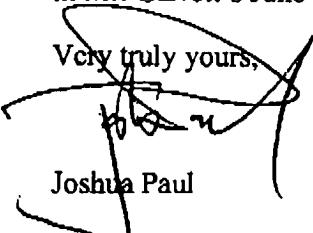
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Allen Harberg, Jr., Esquire
June 14, 2004
Page 2

Morgan Lewis
COUNSELORS AT LAW

I hope this clarifies things for you. Again, we ask that that Mr. Kirk review the '758 Application and then execute and return to Sterne Kessler's offices the Declaration and Assignment enclosed in Mr. Garrett's June 8 letter – all as specifically set forth within the June 8 letter itself.

Very truly yours,


Joshua Paul

c: Gregg R. Melinson, Esquire
Patrick E. Garrett, Esquire



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLANALYTICS, INC.,

Plaintiff,

v.

WILLIAM E. KIRK, KIRK HOLDING
COMPANY, INC., JOHN J. GRUM,
WEATHER TRENDS, INC.,
SURVEILLANCE DATA INC.,
SDI/WEATHER TRENDS INC.,
JAMES K. EGAN, PETER C. KIENZLE
and BUSINESSWEATHER L.L.C.,

Defendants.

Civil Action No. 03-5211 (CMR)

FIRST AMENDED COMPLAINT

Plaintiff, Planalytics, Inc., by its attorneys Morgan Lewis & Bockius LLC, for its First Amended Complaint against Defendants, alleges:

THE PARTIES

1. Plaintiff Planalytics, Inc. ("Planalytics") was formerly known as Strategic Weather Services, Inc. Planalytics is a Pennsylvania corporation and maintains a principal place of business at 1325 Morris Drive, Wayne, Pennsylvania 19087.

2. Defendant William E. Kirk ("Kirk") is a natural person who, upon information and belief, resides at 21 Chestnut Ridge Circle, Easton, Pennsylvania 18042.

3. Defendant Kirk Holding Company, Inc. ("Kirk Holding Co.") is a Pennsylvania corporation which, upon information and belief, maintains a principal place of business at 21 Chestnut Ridge Circle, Easton, Pennsylvania 18042.

4. Defendant John J. Grum ("Grum") is a natural person who, upon information and belief, resides at 34 Forest Road, Allendale, New Jersey 07401.

5. Defendant Weather Trends, Inc. ("Weather Trends") is a Pennsylvania corporation which, upon information and belief, maintains a principal place of business at 21 Chestnut Ridge Circle, Easton, Pennsylvania 18042.

6. Defendant Surveillance Data Inc. ("SDI") is a Pennsylvania corporation and maintains a principal place of business at 220 West Germantown Pike, Suite 140, Plymouth Meeting, Pennsylvania 19462.

7. Defendant SDI/Weather Trends Inc. ("SDI/Weather Trends") is a Pennsylvania corporation and maintains a principal place of business at 220 West Germantown Pike, Suite 140, Plymouth Meeting, Pennsylvania 19462.

8. Defendant James K. Egan ("Egan") is a natural person who, upon information and belief, resides at 1628 North Valley Road, Malvern, Pennsylvania 19355.

9. Defendant Peter C. Kienzle ("Kienzle") is a natural person who, upon information and belief, resides at 579 Colonel Dewees Road, Wayne, Pennsylvania 19087.

10. Defendant BusinessWeather, L.L.C. ("BusinessWeather") is a Pennsylvania limited liability company which, upon information belief, maintains a place of business at 579 Colonel Dewees Road, Wayne, Pennsylvania 19087.

11. Defendants Kirk, Grum, Egan and Kienzle are former employees of Planalytics. Said Defendants, together with Defendants Weather Trends, Kirk Holding Co., SDI, SDI/Weather Trends and BusinessWeather, are engaged in acts of false advertising, copyright infringement, breach of contract, unfair competition, trade secret misappropriation and related misconduct – all as more particularly alleged herein.

JURISDICTION AND VENUE

12. The Court has original jurisdiction over the subject matter of this civil action pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338. The Court has supplemental jurisdiction over the related state law causes of action pursuant to 28 U.S.C. § 1367(a), inasmuch as said claims are so related to the federal claims as to form part of the same case or controversy.

13. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).

FACTS COMMON TO ALL CAUSES OF ACTION

A. Planalytics' Business

14. Every day, businesses make strategic and tactical decisions that are premised upon assessments about the extent of future consumer demand for their products and services.

15. For example, an appliances retailer with stores throughout the country must order next season's stock of air conditioners many months before placing the air conditioners on sale in its stores. The retailer's decisions about the number of air conditioners to order today for delivery in the future, and about how to allocate the purchased inventory among warehouses covering specific geographic territories, turn in part on the retailer's assessment of (or assumptions about) likely future demand for air conditioners among consumers within various specific geographic areas.

16. Businesses use many different metrics to assess likely future consumer demand for their products or services – including, among others, pricing strategies, corporate growth objectives, the competitive landscape and macro-economic trends and assessments.

17. Weather plays a key role in sustaining or inhibiting consumer demand for many products or services. For example, an unseasonably cold summer in the mid-Atlantic states might dampen enthusiasm among consumers in Philadelphia to purchase room air conditioners.

18. Planalytics provides long-range weather forecasting and consulting services to help companies understand the impact of weather on their businesses. Among other applications, Planalytics' long-range weather forecasting and consulting services help companies understand – and execute strategic plans taking account of – the impact of weather upon future consumer demand for products or services.

19. Planalytics uses various proprietary methodologies as the basis for deriving long-range weather forecasts and continuously seeks to develop new and improved methodologies.

20. On the basis of its long-range weather forecasting capabilities, Planalytics has created, and continues to create, innovative products and services for customers whose businesses are in some way impacted by future weather developments. For example, in the retail sector Planalytics uses its long-range weather forecasting capabilities to help businesses make strategic decisions relating to future inventory allocation, media planning, replenishment and "comp store" sales.

21. Planalytics is a know-how driven company. Planalytics has invested many millions of dollars – as well as countless man hours and other effort – to develop, refine and commercialize various proprietary information, business methods and know-how relating to long-range weather forecasting and strategic business planning relating thereto.

22. Some of Planalytics' proprietary methods and know-how are protected by patents issued in the United States and elsewhere. Other aspects of the company's proprietary information, methods and know-how, while not as of the date of this First Amended Complaint separately and specifically protected under the patent laws, represent inter alia valuable confidential business information and trade secrets owned by Planalytics.

23. Today, Planalytics employs some 73 people, including 23 meteorologists. The company works with companies throughout North America and the United Kingdom in the retail, manufacturing, life sciences and energy industries.

24. As a result of Planalytics' superior technologies, business methods and know-how, innovative product development strategies and extensive skill, labor, effort and investment Planalytics has enjoyed success and favorable recognition in the marketplace. As noted by the magazine Business 2.0 in an article published in August 2003 (attached as Exhibit 1), Planalytics

... isn't the only [company] . . . that helps businesses manage weather risk. . . . But Planalytics' claim that it can tell how the weather will affect your business every week next year is unique: No major competitor stands behind detailed forecasts more than two weeks out.

Yet many mainstream retailers and manufacturers depend on Planalytics' forecasts. Wal-Mart has been a client since 1995. Gap's Old Navy stores reportedly skipped some normal January markdowns this year to sell winter items at full price during an unusually cold February, based on Planalytics' advice. Sears incorporates Planalytics' recommendations to allocate seasonal inventory across territories. Gillette's Duracell brand has used Planalytics to gauge how weather will affect battery sales. Home Depot, Ross Stores and Bloomingdale's are also Planalytics' customers.

B. Employment Agreements Between Planalytics and Defendants Kirk, Grum, Egan and Kienzle

25. Defendant Kirk was employed by Planalytics in various positions from May 5, 1997 to September 27, 2002. The last position he held was Vice President, Client Insights and Product Enhancements.

26. Defendant Grum was employed from February 1, 1999 to January 19, 2000 by Planalytics as Vice President, Business Development.

27. Defendant Egan was employed by Planalytics as Vice President, Business Development from August 16, 1999 until April 18, 2002.

28. Defendant Kienzle was employed by Planalytics as Vice President, Business Development from April 23, 2001 until January 9, 2002.

29. As a condition of employment by Planalytics, each of Defendants Kirk, Grum, Egan and Kienzle executed employment agreements with Planalytics – dated, respectively, April

30, 1997, January 22, 1999, August 3, 1999 and April 5, 2001 – upon the commencement of their employment. Copies of these agreements are attached in Exhibits 2 (Kirk), 3 (Grum), 4 (Egan) and 5 (Kienzle).

Covenants of Confidentiality

30. In their employment agreements with Planalytics, Defendants Kirk, Grum and Egan acknowledged inter alia that, during the course of their employment, they would of necessity be exposed to Planalytics' confidential business information (or "Company Confidential Information"):

Because of the nature of your work . . . , you will in the course of your time acquire valuable information and skill with respect to the business operations of the Company and . . . Company Confidential Information . . . , including by way of illustration but not limitation, knowledge of Company's weather forecasting methods, development and implementation of weather models . . . , formulas, processes, data, customer lists, . . . strategic plans and advertising and marketing methods, techniques and strategies.

31. Each of Defendants Kirk, Grum and Egan covenanted that they would "keep all Company Confidential Information strictly confidential both during and after your employment." Said Defendants further agreed that they would not, "during or after [their] . . . employment, directly or indirectly divulge or disclose in any fashion any information with regard to such Company Confidential Information . . . to any person, firm, corporation, association or other entity for any reason or purpose whatsoever."

32. In his employment agreement with Planalytics, Defendant Kienzle covenanted that he would, "at all times during my employment and thereafter, . . . hold [Planalytics']

confidential information] in strictest confidence" and that he would neither use nor disclose such information to any person or entity.

Covenants of Non-Competition

33. In their employment agreements with Planalytics, Defendants Kirk, Grum and Egan covenanted inter alia that, for a period of five years following the conclusion of their employment by Planalytics – they would “not . . . directly or indirectly own, manage, operate, control, be employed by [or] consult with . . . [any business enterprise] which engages in developing, using, consulting or providing long-range weather forecasting utilizing a system the same or materially similar to a system developed by Irving P. Krick Associates, Inc. or the Company and/or [which] services and/or which solicits the business of Company’s customers.”

34. In his employment with Planalytics, Defendant Kienzle covenanted inter alia that, for a period of five years following the end of his employment, he would not “directly or indirectly . . . manage, operate, . . . be employed by [or] consult with . . . [any business enterprise] which engages in developing, using, consulting or providing long-range weather forecasting utilizing a system the same or materially similar to a system developed by Irving P. Krick Associates, Inc. or the Company, and/or [which] services and/or which solicits the business of Company’s customers.”

C. Recent Activities of Defendants Egan, Kienzle and BusinessWeather

35. As hereinabove alleged, Defendant Egan was employed by Planalytics until April 18, 2002 and Defendant Kienzle was employed by Planalytics until January 9, 2002.

36. In or about July 2002, and shortly after Defendant Egan left Planalytics, Egan and Kienzle established a business under the name "Business Weather" to compete against Planalytics by providing long-range weather forecasting services and related strategic assistance and consulting to help companies understand the impact of weather on their business.

37. In or about July 2002, Defendants Egan and Kienzle began to solicit clients for the "Business Weather" business.

38. In or about July 2002 Defendants Egan and Kienzle established an Internet website, WWW.BIZWEATHER.NET, to promote and advertise their newly established business to potential customers throughout the United States and elsewhere.

39. Thereafter, on or about October 7, 2002 Defendants Egan and Kienzle established Defendant BusinessWeather as a corporate entity through which they would continue to operate their business.

40. Upon information and belief, Defendants Egan and Kienzle are the sole members, owners, officers and agents of BusinessWeather and they personally performed, directed or authorized all of the activities and conduct of BusinessWeather complained of herein.

41. Planalytics learned of the business activities of Defendants Egan, Kienzle and BusinessWeather sometime late in 2002.

42. Thereafter, by separate letters dated November 4, 2002, sent, respectively, to Egan and Kienzle, Planalytics notified said Defendants inter alia that they had breached certain non-competition provisions of their employment agreements with Planalytics. Planalytics'

November 4, 2002 letters also demanded that said Defendants immediately cease and desist from their offending conduct.

43. Neither Egan nor Kienzle responded to Planalytics' November 4, 2002 demand letters or otherwise contacted Planalytics about the claim letters.

44. Shortly after November 4, 2002 Defendants Egan and Kienzle took down the Internet website they had established at WWW.BIZWEATHER.NET and, upon information and belief, discontinued the business activities of Defendant BusinessWeather.

45. Thereafter, at a time unknown to Planalytics but believed to be sometime in 2003, Defendants Egan, Kienzle and BusinessWeather recommenced their business activities and once again began soliciting clients in connection with the business of providing long-range weather forecasting services and related strategic assistance and consulting to help companies understand the impact of weather on their business.

D. Recent Activities of Defendants Kirk, Grum, Weather Trends, Kirk Holding Co., SDI and SDI/Weather Trends

46. As hereinabove alleged, Defendant Kirk was employed by Planalytics until September 27, 2002 and Defendant Grum was employed by Planalytics until January 19, 2000.

47. Shortly after his departure from Planalytics, Defendant Kirk established Defendant Weather Trends as a corporate vehicle through which he would compete with Planalytics in providing long-range weather forecasting services and related strategic assistance and consulting to help companies understand the impact of weather on their business.

48. Defendant SDI has acquired Defendant Weather Trends or the assets thereof, and, thereafter, formed Defendant SDI/Weather Trends for the purpose providing long-range weather forecasting services and related strategic assistance and consulting to help companies understand the impact of weather on their business.

49. Upon information and belief, prior to acquiring Defendant Weather Trends or its assets, Defendant SDI conducted a due diligence review, and, in the course thereof, learned about the substance of Defendants Kirk's and Grum's employment agreements with Planalytics – including the covenants of confidentiality and non-competition contained therein.

50. Defendant SDI/Weather Trends is a subsidiary of Defendant SDI. Plaintiff lacks knowledge or information sufficient to form a belief as to whether SDI has sufficiently maintained the corporate formalities and separateness between itself and its subsidiaries, or whether the subsidiaries are bona fide and financially responsible entities.

51. Prior to the events alleged above, Defendant SDI was engaged, itself or through subsidiary companies, in the business of performing qualitative and quantitative primary research in the health care field, preparing syndicated healthcare related studies, and consulting for the pharmaceutical and consumer products industries worldwide.

52. Prior to the events alleged above, Defendant SDI did not provide long-range weather forecasting services or related strategic assistance and consulting to help companies understand the impact of weather on their business.

53. On or about January 9, 2003, a person named "Peter Jensen" obtained the rights to the Internet domain name WXTRENDS.COM. Upon information and belief, at the time Mr. Jensen was employed by Defendant SDI or was otherwise acting on behalf of SDI.

54. Thereafter, Defendants Kirk, SDI/Weather Trends, Weather Trends, SDI, Kirk Holding Co. or Grum (or some combination of them) established an Internet website at WWW.WXTRENDS.COM (the "SDI/Weather Trends Website") to promote the business of providing long-range weather forecasting services and related strategic assistance and consulting to help companies understand the impact of weather on their business.

55. In July of 2003, Defendant Weather Trends changed its name to Kirk Holding Co.

COUNT I

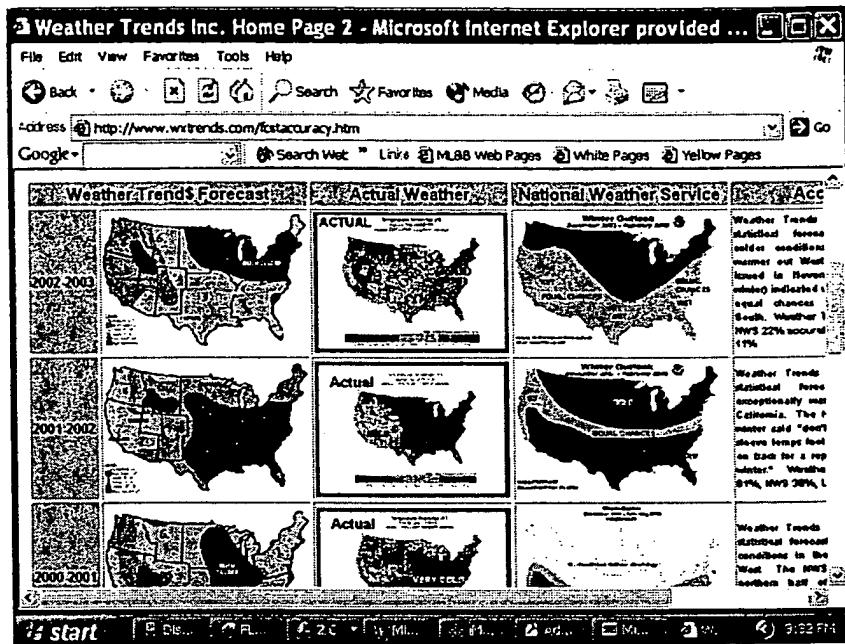
**FALSE ADVERTISING IN VIOLATION OF
THE LANHAM TRADEMARK ACT - 15 U.S.C. § 1125(a)(1)(B)**

(Against SDI/Weather Trends, Weather Trends, Kirk Holding Co. and Kirk)

56. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 55 as though fully set forth herein.

57. The SDI/Weather Trends Website is a form of commercial advertising and promotion in and affecting interstate commerce.

58. Set forth below is a true and accurate reproduction of a page from the SDI/Weather Trends Website:



59. Upon information and belief, Defendant Kirk personally prepared, directed or authorized the contents of the SDI/Weather Trends Website.

60. The page from the SDI/Weather Trends Website reproduced above presents various maps and text appearing in three rows and four columns.

61. In the row captioned "2000-2001" Defendants present a map which purports to depict a long-range weather forecast made by Defendant Weather Trends for the winter season of 2000-2001, and which also inter alia purports to compare said forecast against that winter's actual weather conditions. In accompanying text, Defendants proclaim: "Weather Trends Inc. 11-month ahead statistical forecast indicated very cold conditions in the East and warm out West Weather Trends Accuracy 78%"

62. The SDI/Weather Trends Website as hereinabove described contains various express material false representations and descriptions of fact, including, inter alia: that

defendants have been in business since at least as early as 11 months prior to the onset of the winter of 2000-2001; that defendants made a long-range weather forecast with respect to (and prior to) the winter of 2000-2001; that defendants made said long-range forecast 11 months prior to the onset of 2000-2001 winter season; that defendants prepared the long-range weather forecast for the 2000-2001 winter described in the website; and that Weather Trends existed as a corporate entity engaged in long-range weather forecasting at least “11-month[s] ahead” of the winter of 2000-2001.

63. Each of the statements described in the preceding paragraph is false and, alternatively, misleading. By reason of the foregoing, Defendants SDI/Weather Trends, Weather Trends, Kirk Holding Co. and Kirk have engaged in unlawful false advertising in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

64. In the row captioned “2001-2002” Defendants present a map which purports to depict a long-range weather forecast made by Weather Trends for the winter season of 2001-2002, and which also inter alia purports to compare said Defendant’s forecast against that winter’s actual weather conditions. In accompanying text, Defendants proclaim: “Weather Trends Inc. 11-month ahead statistical forecast indicated an exceptionally warm winter for all but California Weather Trends Accuracy 81% . . .

65. The SDI/Weather Trends Website as hereinabove described contains various express material false representations and descriptions of fact, including, inter alia: that defendants have been in business since at least as early as 11 months prior to the onset of the winter of 2001-2002; that defendants made a long-range weather forecast with respect to (and prior to) the winter of 2001-2002; that defendants made said long-range forecast 11 months prior

to the onset of 2001-2002 winter season; that defendants prepared the long-range weather forecast for the 2001-2002 winter described in the website; and that Weather Trends existed as a corporate entity engaged in long-range weather forecasting at least “11-month[s] ahead” of the winter of 2001-2002.

66. Each of the assertions described in the preceding paragraph is false and, alternatively, misleading. By reason of the foregoing, Defendants SDI/Weather Trends, Weather Trends, Kirk Holding Co. and Kirk have engaged in unlawful false advertising in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

67. In the row captioned “2002-2003” Defendants present a map which purports to depict a long-range weather forecast made by Weather Trends for the winter season of 2002-2003, and which also inter alia purports to compare said Defendant’s forecast against that winter’s actual weather conditions. In accompanying text, defendants proclaim: “Weather Trends Inc. 11-month ahead statistical forecast indicated very cold conditions in the East and warm out West Weather Trends Accuracy 78%”

68. The SDI/Weather Trends Website as hereinabove described contains various express material false representations and/or descriptions of fact, including, inter alia: that defendants have been in business since at least as early as 11 months prior to the onset of the winter of 2002-2003; that defendants made a long-range weather forecast with respect to (and prior to) the winter of 2002-2003; that defendants made said long-range forecast 11 months prior to the onset of 2002-2003 winter season; that defendants prepared the long-range weather forecast for the 2002-2003 winter described in the website; and that Weather Trends existed as a

corporate entity engaged in long-range weather forecasting at least "11-month[s] ahead" of the winter of 2002-2003.

69. Each of the assertions described in the preceding paragraph is false and, alternatively, misleading. By reason of the foregoing, Defendants SDI/Weather Trends, Weather Trends, Kirk Holding Co. and Kirk have engaged in unlawful false advertising in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

70. Upon information and belief, Weather Trends (now known as Kirk Holding Co.) did not exist as a corporate entity until, at the earliest, February of 2003, and SDI/Weather Trends did not exist as a corporate entity until, at the earliest, April of 2003.

71. Upon information and belief, Kirk personally prepared, participated in preparing, directed or authorized preparation of the SDI/Weather Trends Website and the factual assertions and representations contained therein.

72. The assertions and representations contained in the SDI/Weather Trends Website as hereinabove alleged are material to consumers because said assertions and representations purport to establish a history and track record of SDI/Weather Trends' and Weather Trends' business and performance of long-range weather forecasting services and related strategic assistance and consulting.

73. The assertions and representations contained in the SDI/Weather Trends Website as hereinabove alleged are false either on their face or by necessary implication. In addition, and alternatively, said assertions and representations are misleading and likely to confuse consumers regarding SDI/Weather Trends' and Weather Trends' track record, business history and

performance of long-range weather forecasting services and related strategic assistance and consulting.

74. Upon information and belief, Defendants' false advertising has misled consumers and caused confusion regarding SDI/Weather Trends' and Weather Trends' track record, business history and performance of long-range weather forecasting services and related strategic assistance and consulting.

75. Defendants' false advertising has caused Planalytics to suffer diminished good will and has otherwise caused injury to Planalytics.

76. Planalytics has no adequate remedy at law because Defendants are continuing to falsely advertise and because compensatory damages, though available, are insufficient to remedy the harm.

WHEREFORE, Planalytics prays for judgment as follows:

A. That Defendants – together with their respective officers, directors, employees, agents, attorneys, representatives, consultants, and any person or entity in active concert or participation with any of them – be enjoined preliminarily and permanently from, directly or indirectly, stating, implying or representing in the context of any website, brochure, advertisement, promotion, marketing presentation or any other form of advertising or promotional activity that: (i) Defendants made long-range weather forecasts with respect to the winters of 2000-2001, 2001-2002 and/or 2002-2003, and/or (ii) Defendants were engaged in the business of long-range weather forecasting prior the year 2003.

B. That Defendants – together with their officers, directors, employees, agents, attorneys, representatives, consultants, and any person or entity in active concert or participation with any of them – be enjoined preliminarily and permanently from, directly or indirectly, otherwise making any materially false and/or misleading statement of fact with respect to the commercial activities of Planalytics, Defendant Weather Trends, Defendant Kirk Holding Co., Defendant SDI/Weather Trends, Defendant SDI and/or Defendant Kirk.

C. That Defendants be directed to deliver up for destruction all signs, labels, brochures and other printed matter which bear or to which are affixed any false and/or misleading statements of fact with respect to the commercial activities of Planalytics, Defendant Weather Trends, Defendant Kirk Holding Co., Defendant SDI/Weather Trends, Defendant SDI and/or Defendant Kirk.

D. That Planalytics be awarded any damages sustained by reason of Defendants' acts of false advertising;

E. That Defendants be directed to account for and disgorge any and all profits realized by reason of their acts of false advertising;

F. That Planalytics be awarded a reasonable attorney's fee, together with the costs of this action.

G. Any other and further relief which the Court deems to be necessary, just and proper.

COUNT II

FALSE ADVERTISING IN VIOLATION OF THE LANHAM TRADEMARK ACT – 15 U.S.C. § 1125(a)(1)(B)

(Against BusinessWeather and Egan)

77. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 76 as though fully set forth herein.

78. Defendants BusinessWeather and Egan have distributed various items of promotional material to customers and prospective customers.

79. Defendants BusinessWeather and Egan have distributed a promotional brochure called "Business Weather Statistical Verification: Winter 2000-2001 Forecast Comparisons" (hereinafter, "Winter 2000-2001 Forecast Brochure"). A true and accurate copy of the Winter 2000-2001 Forecast Brochure is attached as Exhibit 6.

80. Defendants' brochure states: "Business Weather's trend forecast predicted a very cold winter of 2000-2001 nine months in advance . . ." The brochure presents various maps which purport, inter alia, to compare the results of Business Weather's long-range forecast for winter 2000-2001 against that winter's actual weather conditions; the brochure then claims that Business Weather's forecast turned out to be "78%" accurate.

81. Defendants' Winter 2000-2001 Forecast Brochure contains various express material false representations and descriptions of fact, including, inter alia: that Defendant Business Weather has been in business since at least as early as 9 months prior to the onset of the winter of 2000-2001; that Defendant Business Weather made a long-range weather forecast with respect to (and prior to) the winter of 2000-2001; that Defendant Business Weather made said long-range forecast 9 months prior to the onset of 2000-2001 winter season; that Defendant Business Weather prepared the long-range weather forecast for the 2000-2001 winter described in the brochure; and that Business Weather existed as a corporate entity engaged in long-range weather forecasting at least "nine months in advance" of the winter of 2000-2001.

82. Each of the assertions described above are false and, alternatively, misleading. By reason of the foregoing, Defendants Business Weather and Egan have engaged in unlawful false advertising in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

83. Defendants Business Weather and Egan have distributed a promotional brochure called "Business Weather Statistical Verification: Winter 2001-2002 Forecast Comparisons" (hereinafter, "Winter 2001-2002 Forecast Brochure"). A true and accurate copy of the Winter 2001-2002 Forecast Brochure is attached as Exhibit 7.

84. Defendants' brochure states: "Business Weather's trend forecast predicted a much warmer winter in 2001-2002 . . ." The brochure presents various maps which purport, inter alia, to compare the results of Business Weather's long-range forecast for winter 2001-2002 against that winter's actual weather conditions; the brochure then claims that Business Weather's forecast turned out to be "81%" accurate.

85. Defendants' Winter 2001-2002 Forecast Brochure contains various express material false representations and descriptions of fact, including, inter alia: that Defendant Business Weather made a long-range weather forecast with respect to (and prior to) the winter of 2001-2002; that Defendant Business Weather prepared the long-range weather forecast for the 2001-2002 winter that is depicted in the promotional piece; and that Business Weather existed as a corporate entity engaged in long-range weather forecasting prior to the winter of 2001-2002.

86. Each of the assertions described above are false and, alternatively, misleading. By reason of the foregoing, Defendants Business Weather and Egan have engaged in unlawful false advertising in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

87. Business Weather did not exist as a corporate entity until, at the earliest, July of 2002.

88. Upon information and belief, Egan personally prepared, participated in preparing, directed or authorized preparation of the promotional brochures described above and the factual assertions and representations contained therein.

89. The assertions and representations contained in Defendants' promotional brochures are material to consumers because they purport to establish a history and track record

of BusinessWeather's business and performance of long-range weather forecasting services and related strategic assistance and consulting.

90. The assertions and representations described above are false either on their face or by necessary implication. In addition, and alternatively, said assertions and representations are misleading and are likely to confuse consumers about BusinessWeather's track record, business history and performance of long-range weather forecasting services and related strategic assistance and consulting.

91. Upon information and belief, Defendants' false advertising has misled consumers and caused confusion regarding BusinessWeather's track record, business history and performance in long-range weather forecasting and consulting.

92. Defendants' false advertising has caused Planalytics to suffer diminished good will and has otherwise caused injury to Planalytics.

93. Planalytics has no adequate remedy at law because Defendants are continuing to falsely advertise and because compensatory damages, though available, are insufficient to remedy the harm.

WHEREFORE, Planalytics prays for judgment as follows:

A. That Defendants – together with their officers, directors, employees, agents, attorneys, representatives, consultants, and any person or entity in active concert or participation with any of them – be enjoined preliminarily and permanently from, directly or indirectly, stating, implying or representing in the context of any website, brochure, advertisement, promotion, marketing presentation or any other form of advertising or promotional activity that: (i) Defendant BusinessWeather has made long-range weather forecast with respect to the winters of 2000-2001, 2001-2002, and/or 2002-2003; and/or (ii) Defendant BusinessWeather prepared long-range weather forecasts of any sort with respect to any period of time prior to 2004.

B. That Defendants – together with their officers, directors, employees, agents, attorneys, representatives, consultants, and any person or entity active concert or participation with any of them – be enjoined preliminarily and permanently from, directly or indirectly, otherwise making any materially false and/or misleading statement of fact with respect to the commercial activities of Planalytics, Defendant BusinessWeather and/or Egan.

C. That Defendants be directed to deliver up for destruction all signs, labels, brochures and other printed matter which bear or to which are affixed any false and/or misleading statements of fact with respect to the commercial activities of Planalytics or Defendant BusinessWeather.

D. That Planalytics be awarded any damages sustained by reason of Defendant's acts of false advertising;

E. That Defendants be directed to account for and disgorge any and all profits realized by reason of their acts of false advertising;

F. That Planalytics be awarded a reasonable attorney's fee, together with the costs of this action.

G Any other and further relief which the Court deems to be necessary, just and proper.

COUNT III

COPYRIGHT INFRINGEMENT IN VIOLATION OF THE COPYRIGHT ACT OF 1976 – 17 U.S.C. § 501

(Against Kirk, BusinessWeather and Egan)

94. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 93 as though fully set forth herein.

95. At all relevant times, Planalytics has owned all right, title and interest in and to the copyright in the original creative work entitled "National Weather Service vs. Planalytics"

(hereinafter, "Planalytics' Work"). A true and correct photocopy of Planalytics' Work is attached as Exhibit 8.

96. Planalytics has complied in all respects with Title 17 of the United States Code and, in compliance with the law, on September 3, 2003 applied with the Registrar of Copyrights for the issuance on an expedited basis of the appropriate Certificate of Registration. A true and correct copy of the Certificate of Registration issued by the Registrar of Copyrights, No. TX 5-783-928, is attached as Exhibit 9 and constitutes prima facie evidence of the truth of the facts stated in the Certificate, that Planalytics' Work embodies copyrightable subject matter, and that Planalytics is the author and owner of the copyright in Planalytics' Work.

97. Upon information and belief, Defendant Kirk while employed by Planalytics created a promotional brochure (the "Infringing Work") for Defendants Egan and BusinessWeather, said promotional brochure being embodied in the Winter 2001-2002 Forecast Brochure (Exhibit 7). In so doing, Defendant Kirk infringed the copyright in Planalytics' Work in violation of Section 501 of the Copyright Act, 17 U.S.C. § 501, by unlawfully copying said work and/or by creating an unauthorized derivative work based upon Planalytics' Work.

98. Upon information and belief, Defendant Kirk transmitted the Infringing Work to Defendants BusinessWeather and Egan in interstate commerce via the Internet or mail.

99. Defendants BusinessWeather and Egan have distributed and copied the Infringing Work in interstate commerce in the course of promoting their business. In so doing, Defendants BusinessWeather and Egan have infringed the copyright in Planalytics' Work in violation of Section 501 of the Copyright Act, 17 U.S.C. § 501, by unlawfully distributing copies of and/or unauthorized derivative works based upon Planalytics' Work.

100. Defendants Kirk, BusinessWeather and Egan have engaged in the aforementioned acts of copyright infringement willfully and with full knowledge of Planalytics' ownership of the copyright in Planalytics' Work.

101. Defendants' acts of copyright infringement have caused injury to Planalytics.

102. Planalytics has no adequate remedy at law because Defendants are continuing to infringe Planalytics' copyrights and because compensatory and statutory damages, though available, are insufficient to remedy the harm.

WHEREFORE, Planalytics prays for judgment as follows:

A. That Defendants – together with their respective officers, directors, employees, agents, attorneys, representatives, consultants, and any person or entity in active concert or participation with any of them – be enjoined preliminarily and permanently from, directly or indirectly, reproducing, distributing, making, reprinting, publishing, displaying, manufacturing, selling, offering for sale, promoting, advertising,, distributing and/or commercially exploiting in any manner: (i) Defendants' Winter 2001-2002 Forecast Brochure and (ii) any other brochures, prints, promotional material, deliverables or presentations – whether in written or digital form – which bear any unauthorized copy of Planalytics' Work or any works substantially similar thereto.

B. That Defendants be directed to destroy all unauthorized copies of Planalytics' Work.

C. That Planalytics be awarded its actual damages and any profits realized by Defendants as a result of Defendants' acts of copyright infringement, or, to the extent recoverable, appropriate statutory damages in lieu of actual damages.

D. That Planalytics be awarded such other and further relief as relief as this Court may deem just and proper.

COUNT IV

**PROVISION AND DISTRIBUTION OF FALSE
COPYRIGHT MANAGEMENT INFORMATION IN VIOLATION
OF THE DIGITAL MILLENNIUM COPYRIGHT ACT - 17 U.S.C. § 1202(A)**

(Against Business Weather and Egan)

103. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 102 as though fully set forth herein.

104. The Winter 2000-2001 Forecast Brochure (Exhibit 6) bears the following copyright notice: “©2001 Business Weather Inc.” The Copyright Management Information depicted in said copyright notice is false.

105. The Winter 2001-2002 Forecast Brochure (Exhibit 7) bears the following copyright notice: “©2001 Business Weather Inc.” The Copyright Management Information depicted in said copyright notice is false.

106. Defendants Business Weather and Egan knew that the foregoing Copyright Management Information was false because they knew that BusinessWeather did not exist as a corporate entity until, at the earliest, July of 2002.

107. Defendants BusinessWeather and Egan provided the foregoing false Copyright Management Information knowingly and with the intent to induce, enable, facilitate or conceal infringement.

108. By reason of the foregoing, Defendants BusinessWeather and Egan have violated the Digital Millennium Copyright Act's prohibitions against providing false Copyright Management Information, 17 U.S.C. § 1202(a).

WHEREFORE, Planalytics prays for judgment as follows:

A. That Defendants – together with their officers, directors, employees, agents, servants, successors and/or assigns, and all persons or companies in active concert and/or participation with any of them – be enjoined, preliminarily and permanently, from distributing, displaying, reproducing, publishing, offering for sale, promoting and/or otherwise commercially exploiting in any manner (i) Defendants' Winter 2000-2001 Forecast Brochure, (ii) Defendants' Winter 2001-2001 Forecast Brochure and (iii) any other brochures, prints, promotional material, deliverables or presentations – whether in written or digital form – which contain any false or misleading Copyright Management Information.

B. That Planalytics be awarded its actual damages and any profits realized by Defendants as a result of Defendants' provision or distribution of false Copyright Management Information, or, the extent recoverable, appropriate statutory damages in lieu of actual damages.

C. That Planalytics recover the costs of this action.

D. That Planalytics recover such other and further relief as this Court may deem just and proper.

COUNT V

BREACH OF CONTRACT – COVENANT OF CONFIDENTIALITY

(Against Kirk, Grum, Egan and Kienzle)

109. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 108 as though fully set forth herein.

110. As hereinabove alleged, Planalytics uses different proprietary methodologies as the basis for deriving long-range weather forecasts and continuously seeks to develop new and improved long-range weather forecast methodologies.

111. As a result of insight, creativity, analysis, modeling, verification and other efforts, commencing in or about 2001 Planalytics began to develop on the basis of historical weather data certain weather trend rules (the "Weather Trend Rules") for making reasonably accurate long-range (eleven months in advance) predictions about future weather trends.

112. The Weather Trend Rules are the fruit of efforts undertaken collectively by a number of meteorologists – among others, Defendant Kirk – during the course of their employment by Planalytics.

113. During the course of the foregoing activities, Planalytics came to the realization that the Weather Trend Rules could in themselves provide a reasonably sufficient basis for a long-range weather forecast for use in the context of providing strategic advice to businesses about such issues as inventory purchasing, inventory stock outs, inventory allocation, media planning and marketing, price promotions, replenishment, inventory excess, markdown risks, "comp store" sales and the like.

114. The Weather Trend Rules and their utility as the basis of a long-range weather forecast for use in the commercial applications described above represent valuable and proprietary confidential business information and know-how owned by Planalytics.

115. The term "Confidential Business Information" as used herein refers to the confidential business information and know-how described in the preceding paragraphs.

(Planalytics emphasizes that its claim of proprietary rights to subject matter extends beyond the matters described above. Planalytics has framed the definition as it has based on the present state of Planalytics' knowledge of Defendants' activities.)

116. Planalytics' Confidential Business Information is valuable to its business, is not commonly known, and gives Planalytics a competitive advantage over its competitors.

117. Defendant Kirk acquired knowledge of the Confidential Business Information as part of his employment duties at Planalytics.

118. Upon information and belief, Defendants Grum, Egan and Kienzle also acquired knowledge of the Confidential Business Information during the course of or immediately following their employment by Planalytics.

119. Notwithstanding the provisions contained in their employment agreements with Planalytics (all as hereinabove alleged), Defendants Kirk and Grum are exploiting unlawfully their knowledge of the Confidential Business Information by inter alia using and disclosing Confidential Business Information without Planalytics' permission in connection with the business activities of Defendants SDI, SDI/Weather Trends, Weather Trends and Kirk Holding Co.

120. Notwithstanding the provisions contained in their employment agreements with Planalytics (all as hereinabove alleged), Defendants Egan and Kienzle are exploiting unlawfully their knowledge of the Confidential Business Information by inter alia using and disclosing the Confidential Business Information in connection with the business activities of Defendant WeatherTrends.

121. Defendants Kirk, Grum, Egan and Kienzle continue to be bound by the non-disclosure provisions of their employment agreements with Planalytics.

122. Each of Defendants Kirk, Grum, Egan and Kienzle herein have wrongfully used and exploited Planalytics' Confidential Business Information -- all to Planalytics' economic and competitive detriment – by using said Confidential Business Information in furtherance of their respective businesses.

123. By reason of the foregoing, each of Defendants Kirk, Grum, Egan and Kienzle have breached the Covenant of Confidentiality contained within their respective employment agreements with Planalytics.

124. Upon information and belief, said Defendants are continuing their wrongful exploitation and use of Planalytics' Confidential Business Information.

125. Defendants' conduct as hereinabove alleged has proximately caused Planalytics to suffer damages.

126. Defendants' conduct as hereinabove alleged is causing and will continue to cause Planalytics to suffer irreparable injury.

WHEREFORE, Planalytics prays for judgment as follows:

A. That Defendants – together with their agents, officers, directors, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them – be enjoined, preliminarily and permanently, from using, disclosing or exploiting, in any way, (i) the Weather Trend Rules and (ii) any other aspect of Planalytics' Confidential Business Information;

B. That the Court grant preliminary and permanent injunctive relief directing that Defendants – together with their agents, officers, directors, servants, employees, successors

and/or assigns, and all persons or companies in active concert and/or participation with them -- deliver up to Planalytics all documents, data and materials -- whether in written or digital form -- containing, embodying or referring to (i) the Weather Trend Rules and (ii) any other aspect of Planalytics' Confidential Business Information;

C. That Planalytics be awarded all damages it has suffered as a result of Defendants' breach and all profits realized by Defendants as a result of Defendants' wrongful acts in an amount to be determined at the trial of this action;

D. That Plaintiff recover from Defendants all costs incurred in this action, including the reasonable attorney's fees incurred in connection with Plaintiff's claim, together with such other and further relief as this Court may deem just and proper.

COUNT VI

MISAPPROPRIATION OF TRADE SECRETS

(Against Kirk and all other Defendants)

127. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 126 as though fully set forth herein.

128. As hereinabove alleged, Planalytics uses different proprietary methodologies as the basis for deriving long-range weather forecasts and continuously seeks to develop new and improved long-range weather forecast methodologies.

129. As a result of insight, creativity, analysis, modeling, verification and other efforts, commencing in or about 2001 Planalytics began to develop on the basis of historical weather data certain weather trend rules (the "Weather Trend Rules") for making reasonably accurate long-range (eleven months in advance) predictions about future weather trends.

130. The Weather Trend Rules are the fruit of efforts undertaken collectively by a number of meteorologists – among others, Defendant Kirk – during the course of their employment by Planalytics.

131. During the course of the foregoing activities, Planalytics came to the realization that the Weather Trend Rules could in themselves provide a reasonably sufficient basis for a long-range weather forecast for use in the context of providing strategic advice to businesses about such issues as inventory purchasing, inventory stock outs, inventory allocation, media planning and marketing, price promotions, replenishment, inventory excess, markdown risks, “comp store” sales and the like.

132. The Weather Trend Rules themselves and for use in the context of providing strategic advice to businesses about such issues as inventory purchasing, inventory stock outs, inventory allocation, media planning and marketing, price promotions, replenishment, inventory excess, markdown risks, “comp store” sales and the like represent valuable trade secrets of Planalytics.

133. Upon information and belief, Planalytics’ trade secrets as hereinabove alleged are not commonly known. Planalytics has taken and continues to take reasonable steps to maintain the confidential nature of the foregoing.

134. Planalytics’ trade secrets as hereinabove alleged, if they were to become commonly known to or used by any of Planalytics’ competitors, would compromise Planalytics’ ability to realize the benefit from its considerable investment of time, effort and expense.

135. Defendant Kirk acquired knowledge of Planalytics' trade secrets in the course of and incident to his employment duties at Planalytics.

136. During his employment by Planalytics, Defendant Kirk regularly copied Planalytics' proprietary business documents from Planalytics' computer servers and transmitted said documents to his personal home e-mail account.

137. Defendant Kirk has misappropriated Planalytics' trade secrets by inter alia using and disclosing said trade secrets without Planalytics' permission in connection with the business activities of Defendants SDI, SDI/Weather Trends, Weather Trends and Kirk Holding Co., and, upon information and belief, by disclosing them without Planalytics' permission to Defendants BusinessWeather, Egan and Kienzle.

138. Defendants SDI, SDI/Weather Trends, Weather Trends, Kirk Holding Co. and Grum received disclosure of Planalytics' trade secrets from Kirk under circumstances in which they knew or had reason to know that the information constituted proprietary and confidential trade secrets belonging to Planalytics and that – in disclosing the information to them – Kirk was breaching a duty to Planalytics.

139. Defendants SDI, SDI/Weather Trends, Weather Trends, Kirk Holding Co. and Grum have misappropriated Planalytics' trade secrets by inter alia using said trade secrets without Planalytics' permission in connection with their business activities.

140. Defendant Egan received disclosure of Planalytics' trade secrets from Kirk under circumstances in which he knew or had reason to know that the information constituted

proprietary and confidential trade secrets belonging to Planalytics and that – in disclosing the information to him – Kirk was breaching a duty to Planalytics.

141. Defendants BusinessWeather and Kienzle received disclosure of Planalytics' trade secrets from Defendants Kirk or Egan under circumstances in which they knew or had reason to know that the information constituted proprietary and confidential trade secrets belonging to Planalytics.

142. Defendants BusinessWeather, Egan and Kienzle have misappropriated Planalytics' trade secrets by inter alia using said trade secrets without Planalytics' permission in connection with the business activities of BusinessWeather.

143. Defendants knowingly and intentionally engaged in the foregoing conduct without justification or privilege.

144. Upon information and belief, Defendants are continuing their wrongful exploitation and use of Planalytics' misappropriated trade secrets.

145. Defendants' misappropriations of Planalytics' trade secrets have proximately caused Planalytics to suffer economic injury.

146. Defendants' continuing misappropriations of Planalytics' trade secrets are causing and will continue to cause Planalytics to suffer irreparable harm.

147. Defendants' conduct was intentional, willful, outrageous and malicious, and justify the imposition of punitive damages.

WHEREFORE, Planalytics prays for judgment as follows:

A. That Defendants – together with their agents, officers, directors, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them – be enjoined, preliminarily and permanently, from using, disclosing or exploiting, in any way, (i) the Weather Trend Rules and (ii) any other aspect of Planalytics' trade secrets and/or confidential information;

B. That the Court grant preliminary and permanent injunctive relief directing that Defendants – together with their agents, officers, directors, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them -- deliver up to Planalytics all documents, data and materials – whether in written or digital form – containing, embodying or referring to (i) the Weather Trend Rules and (ii) any other aspect of Planalytics' trade secrets and/or confidential information;

C. That Planalytics be awarded all damages it has suffered as a result of Defendants' misappropriation of Planalytics' trade secrets and confidential information and all profits realized by Defendants as a result of Defendants' wrongful acts in an amount to be determined at the trial of this action;

D. That Planalytics be awarded punitive damages.

E. That Plaintiff recover from Defendants all costs incurred in this action, including the reasonable attorney's fees incurred in connection with Plaintiff's claim, together with such other and further relief as this Court may deem just and proper.

COUNT VII

BREACH OF CONTRACT - COVENANT NOT TO COMPETE

(Against Kirk, Grum, Egan and Kienzle)

148. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 147 as though fully set forth herein.

149. Defendants Kirk, Grum, Egan and Kienzle have materially breached the non-competition covenants contained within their employment agreements with Planalytics by inter alia engaging in the business of long-range weather forecasting using a system which is the same

as or materially similar to systems developed by Planalytics – to wit, the Weather Trend Rules – and by doing so prior to the expiration of their covenants not to compete.

150. Defendants' breaches of their covenants of non-competition are particularly damaging to Planalytics' legitimate nationwide business interests (and therefore reasonably warrant nationwide injunctive relief for a period of five years) because Defendants were privy to sensitive and proprietary technical or business information.

151. In addition, Defendant Kirk was a key Planalytics employee and was a central participant during his employment in the development of Planalytics' product lines, strategic planning efforts, the Weather Trend Rules and the Confidential Business Information.

152. Defendants' contractual breaches were committed knowingly and without justification or privilege under the law.

153. Defendants' material breaches of their covenants not to compete with Planalytics have proximately caused damages.

154. Defendants' continuing material breaches of their covenants not to compete with Planalytics have caused and continue to cause irreparable harm to Planalytics good will, customer relations, market share, and competitive advantage in the marketplace.

WHEREFORE, Planalytics prays for judgment as follows:

A. That Defendants, their officers, directors, agents, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them, be preliminarily and permanently enjoined from breaching their respective covenants not to compete and from competing with Planalytics in the manner prohibited by Defendants' respective employment agreements with Planalytics;

B. That Planalytics be awarded all damages it has suffered as a result of Defendants' conduct and all profits realized by Defendants as a result of Defendants' wrongful acts in an amount to be determined at the trial of this action;

C. That Planalytics recover from Defendants all costs incurred in this action, together with such other and further relief as this Court may deem just and proper.

COUNT VIII

BREACH OF FIDUCIARY DUTY

(Against Kirk)

155. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 154 as though fully set forth herein.

156. Defendant Kirk was employed by Planalytics in various executive capacities and owed fiduciary duties of loyalty and care to Planalytics and its shareholders.

157. Defendant Kirk had an uncompromising fiduciary duty to ensure that his actions were entirely fair to Planalytics and its shareholders.

158. Upon information and belief, in or about August of 2002 (but unbeknownst to Planalytics until no earlier than in or about the late summer of 2003), and at a time when Defendant Kirk was employed by Planalytics in an executive capacity, Kirk provided material assistance to Defendant Egan in connection with Egan's efforts to create marketing and sales materials for Defendants Egan's and Kienzle's "Business Weather" venture.

159. Upon information and formation, Defendant Kirk provided assistance to Defendant Egan as hereinabove alleged with full knowledge that he was providing assistance to a

would-be competitor of Planalytics and that he was enabling and encouraging Egan to breach various of his post-employment contractual obligations to Planalytics.

160. In engaging in the conduct hereinabove alleged, Defendant Kirk breached the fiduciary duties he owed to Planalytics.

161. Defendant Kirk further breached his fiduciary duties to Planalytics by undertaking various other acts of misconduct contrary to Planalytics' legitimate interests during the course of his employment by Planalytics, including, among others, wrongfully disclosing the Confidential Business Information and possibly other of Planalytics' proprietary information and know-how to various of the other Defendants as alleged above.

162. In engaging in the aforesaid acts of misconduct, Defendant Kirk acted in bad faith and for the purpose of furthering his own self interest, to the substantial detriment of Planalytics.

163. Defendant Kirk's acts of misconduct as hereinabove alleged were intentional, reckless and/or grossly negligent.

164. In engaging in the aforesaid acts of misconduct, Defendant Kirk breached his fiduciary duties of loyalty and care to Planalytics and its shareholders.

165. As a direct and proximate result of Defendant Kirk's breaches of his fiduciary duties, Planalytics and its shareholders and owners have suffered substantial injuries.

166. Defendant Kirk's misconduct was intentional, willful, outrageous and malicious, and justify the imposition of punitive damages.

WHEREFORE, Planalytics prays for judgment against Defendant Kirk as follows:

A. That Planalytics be awarded all damages it has suffered as a result of Defendant Kirk's breaches of his fiduciary duties and all profits realized by Defendant Kirk as a result of his wrongful acts in an amount to be determined at the trial of this action;

B. That Planalytics be awarded punitive damages.

C. That Planalytics recover from Defendant Kirk all costs incurred in this action, together with such other and further relief as this Court may deem just and proper.

COUNT IX

BREACH OF CONTRACT – COVENANT NOT TO SOLICIT CLIENTS

(Against Kirk, Grum and Egan)

167. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 166 as though fully set forth herein.

168. Incident to their employment and as an express term of their respective employment agreements with Planalytics, each of the Defendants Kirk, Grum and Egan covenanted not to solicit Planalytics' customers or employees for a period of five years following termination of their employment.

169. Defendants Kirk, Grum and Egan have materially breached their covenants not to solicit by contacting and marketing long-range weather forecasting services and related strategic planning and consulting assistance to Planalytics' current and prospective customers.

170. Upon information and belief Defendants Kirk, Grum and Egan have materially breached their covenants not to solicit by inducing or attempting to induce employees of Planalytics to assist said Defendants in their wrongful conduct.

171. Defendants' contractual breaches were committed knowingly and without justification or privilege under the law.

172. Defendants' material breaches of their non-solicitation covenants have proximately caused damages to Planalytics.

173. Defendants' continuing material breaches of their non-solicitation covenants have caused and continue to cause irreparable harm to Planalytics good will, customer relations, employee relations, market share, and competitive advantage in the market place.

WHEREFORE, Planalytics prays for judgment against Defendants as follows:

A. That Defendants, their officers, directors, agents, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them, be preliminarily and permanently enjoined from breaching their respective non-solicitation covenants with Planalytics;

B. That Planalytics be awarded all damages it has suffered as a result of Defendants' conduct and all profits realized by Defendants as a result of Defendants' wrongful acts in an amount to be determined at the trial of this action;

C. That Plaintiff recover from Defendants all costs incurred in this action, together with such other and further relief as this Court may deem just and proper.

COUNT X

TORTIOUS INTERFERENCE WITH CONTRACT

(Against SDI)

174. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 173 as though fully set forth herein.

175. Planalytics has existing contractual relations with Defendant Kirk (along with its other current and former employees).

176. Upon information and belief, prior to acquiring Defendant Weather Trends or its assets, Defendant SDI conducted a due diligence review, and, in the course thereof, learned about the substance of Defendant Kirk's employment agreement with Planalytics and of the covenants of confidentiality and non-competition contained therein.

177. Upon information and belief, Defendant SDI knew and/or had reason to know of Planalytics' contractual relations with Kirk and Planalytics' other employees and former employees.

178. By acquiring Defendant Weather Trends or its assets, and by establishing the SDI/Weather Trends business through the offices of Defendant Kirk, Defendant SDI has willfully, systematically, and with an intent to injure Planalytics engaged in a pattern of deliberate interference with the Planalytics' employment agreement with Kirk.

179. Defendant SDI has willfully, systematically, and with an intent to injure Planalytics, engaged in a pattern of deliberate interference with the contractual relationships between Planalytics and Kirk by, among other things, contacting and inducing or attempting to induce Kirk to breach his contractual nondisclosure, non-compete and non-solicitation obligations to Planalytics.

180. Defendant SDI's actions in interfering with Planalytics' contractual relationships are improper and without justification or privilege under the law.

181. Defendant SDI's actions in interfering with Planalytics' contractual relationships were engaged in by SDI for the purpose of injuring Planalytics and with knowledge that an injury to Planalytics was certain or substantially certain to result from their conduct.

182. Defendant SDI's tortious interference with Planalytics' contractual relationships has proximately caused damages.

183. Defendant SDI's continuing tortious interference has caused and continues to cause irreparable harm to Planalytics' good will, customer and prospective customer relations, and contractual relations with its current and former employees.

184. Defendant SDI's conduct was intentional, willful, outrageous and malicious, and justify the imposition of punitive damages.

WHEREFORE, Planalytics prays for judgment against SDI as follows:

A. That Defendant SDI, its officers, directors, agents, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them, be preliminarily and permanently enjoined from interfering with Planalytics' contractual relationship with Kirk.

B. That Planalytics be awarded all damages it has suffered as a result of Defendant SDI's tortious interference with Planalytics' business relations and all profits realized by Defendants as a result of SDI's wrongful acts in an amount to be determined at the trial of this action;

C. That Planalytics be awarded punitive damages.

D. That Planalytics recover from Defendant SDI all costs incurred in this action, together with such other and further relief as this Court may deem just and proper.

COUNT XII

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

(Against All Defendants)

185. Planalytics repeats and realleges the allegations made in Paragraphs 1 through 184 as though fully set forth herein.

186. Planalytics has existing business and contractual relations with its current customers throughout the United States and abroad.

187. Planalytics has existing business and contractual relations with its current and former employees.

188. Planalytics has prospective business and contractual relations with its existing customers and with certain prospective new customers.

189. All of the Defendants knew and/or had reason to know of Planalytics' existing business and contractual relations with its current and former employees and of Planalytics' prospective business and contractual relations with its current and prospective customers.

190. Defendants have willfully, systematically, and with an intent to injure Planalytics, engaged in a pattern of deliberate interference with the business relationships between Planalytics and its customers and prospective customers by, among other things, contacting and inducing or attempting to induce said customers to sever their business relationships with Planalytics.

191. Defendants have willfully, systematically, and with an intent to injure Planalytics, engaged in a pattern of deliberate interference with the business relationships between

Planalytics and its employees and former employees by, among other things, contacting and inducing or attempting to induce Planalytics' current and former employees to breach their contractual nondisclosure, non-compete and non-solicitation obligations to Planalytics.

192. Defendants' actions in interfering with Planalytics' business relationships are improper and have been engaged in by them knowingly and without justification or privilege under the law.

193. Defendants' actions in interfering with Planalytics' business relationships were engaged in by them for the purpose of injuring Planalytics and with knowledge that an injury to Planalytics was certain or substantially certain to result from their conduct.

194. Defendants' tortious interference with Planalytics' business relationships has proximately caused damages.

195. Defendants' continuing tortious interference has caused and continues to cause irreparable harm to Planalytics good will, customer and prospective customer relations, and contractual relations with its current and former employees.

196. Defendants' conduct was intentional, willful, outrageous and malicious, and justify the imposition of punitive damages.

WHEREFORE, Planalytics prays for judgment against all Defendants as follows:

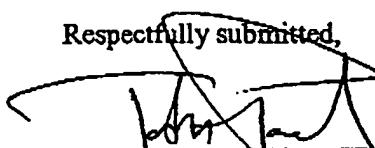
A. That Defendants, their officers, directors, agents, servants, employees, successors and/or assigns, and all persons or companies in active concert and/or participation with them, be preliminarily and permanently enjoined from interfering with Planalytics' business relations with Planalytics' employees and with Planalytics' current and prospective customers.

B. That Planalytics be awarded all damages it has suffered as a result of Defendants' tortious interference with Planalytics' business relations and all profits realized by Defendants as a result of Defendants' wrongful acts in an amount to be determined at the trial of this action;

C. That Planalytics be awarded punitive damages.

D. That Planalytics recover from Defendants all costs incurred in this action, together with such other and further relief as this Court may deem just and proper.

Respectfully submitted,


Joshua Paul (admitted *pro hac vice*)
Thomas S. Bloom (Pa. ID No. 85319)
MORGAN LEWIS & BOCKIUS LLP
Attorneys for Plaintiff
1701 Market Street
Philadelphia, PA 19103-2921
(212) 309-6087 (Mr. Paul)
(215) 963-5543 (Mr. Bloom)

Dated: February 5, 2004

BUSINESS

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CAN THIS WEATHERMAN SEE YOUR FUTURE?

BY ANDY RASKIN PHOTO-ILLUSTRATION BY AARON GOODMAN

As marketing vice president at lawn chemical manufacturer Bayer Advanced, Mark Schneid has come to terms with the fact that for most homeowners, eradicating crabgrass isn't a top-of-mind concern. "People don't wake up thinking, 'Let's kill weeds,'" he says. But every spring, when receding frosts lay bare the nation's neglected front yards, Schneid has just a few weeks to sell his herbicide. Trouble is, spring never arrives in sync with the calendar, and ad space for Triple Action Lawn Fertilizer Plus Weed Control must be reserved five months in advance.

So Schneid schedules his marketing blitz with help from Planalytics, a consulting firm based in Wayne, Pa., that claims it can predict how weather will impact individual products' sales up to one year in the future. Never mind that the world's top meteorologists say long-range weather predictions are unreliable. Schneid is a happy customer: Heeding Planalytics's projection that spring 2003 would start late, he delayed promotions a few weeks and scored big when the sun appeared in April. "Three out of four times, Planalytics gets it right," he says.

In our personal lives, we often find pleasure in unexpected sunshine or getting caught in the rain. But in business, Mother Nature's unpredictability is expensive. Retailers have to decide when to stock sweaters in St. Louis and T-shirts in Tennessee. Power utilities that misjudge demand have to buy costly last-minute megawatts. Construction companies may find themselves overstuffed during severe winters that have heating-oil suppliers struggling to meet demand. The National Oceanic and Atmospheric Administration (NOAA) estimates that weather-sensitive industries account for about a third of the U.S. gross domestic product.

Planalytics claims that its long-range forecasts can accurately predict the weather a year from now. Meteorologists say it's impossible. But try telling that to Wal-Mart, Gap, Sears, and the company's many other paying customers.

Modern corporations have figured out ways to shelter themselves from many risks; they buy insurance for fire, tornadoes, or earthquakes. They use financial derivatives to lock in interest or exchange rates. But many still treat climate as an intractable problem. In recent months, U.S. Airways, Wendy's International, and BJ's Wholesale Club all pinned poor results on unseasonable weather.

That's where Planalytics comes in. The privately held company isn't the only one that helps businesses manage weather risk. With 2002 revenues of about \$10 million, it's only a modest player in the estimated \$500 million commercial weather market. (Weather Services International, owned by Landmark Communication, is the biggest, though the firm doesn't disclose divisional sales results.) But Planalytics's claim that it can tell how the weather will affect your business every week next year is unique: No major competitor stands behind detailed forecasts more than two weeks out.

Yet many mainstream retailers and manufacturers depend on Planalytics's forecasts. Wal-Mart has been a client since 1995. Gap's Old Navy stores reportedly skipped some normal January markdowns this year to sell winter items at full price during an unusually cold February, based on Planalytics's advice. Sears incorporates Planalytics recommendations to allocate seasonal inventory across territories. Gillette's Duracell brand has used Planalytics to gauge how weather will affect battery sales. Home Depot, Ross Stores, and Bloomingdale's are also Planalytics customers.

The roster is impressive, but it raises an obvious question: Can Planalytics really predict next year's weather? The company's founder and CEO, 38-year-old Frederic Fox,





20/20 TOMORROW-VISION
Planalytics CEO Frederic Fox has a
top-secret technique for anticipating
the weather's impact on sales.

refuses to discuss his technique, saying only that he bought it from a now-deceased weatherman who was shunned by the meteorological establishment. Besides, he adds, Planalytics's method is accurate 75 percent of the time, so all that really matters is that it works. "If we weren't delivering value," he asks, "would Wal-Mart be a client?"

On a cold, misty May morning, Paul Walsh, Planalytics VP for client services, is in San Francisco to visit Old Navy and pitch his service to Gap's other brands. A retired Air Force weatherman, Walsh was chief forecaster for the Army's 101st Airborne Division during Operation Desert Storm, when he encouraged battlefield commanders to adopt a proactive "anticipate and exploit" approach to the weather. At Planalytics, he does pretty much the same thing—except now he works with brand managers.

"We never give clients a weather report," Walsh says. Instead, customers receive a list of fluctuating percentages—"plus 7 percent," "minus 5 percent," etc.—one for each week of the coming year. The percentages are what customers pay for; they represent Planalytics's prediction for how the weather will increase or decrease demand for a specific product during a specific week compared with the same week the year before. Planalytics calls these forecasts "weather-driven demand," but privately, Walsh calls them "weather-impacts," or WIMPs.

To create a WIMP, Planalytics matches at least three years of client sales history against historical weather data to find a statistical correlation. Most products have a weather threshold, which varies regionally. For instance, sales of winter coats take off in Boston when the temperature drops below 40 degrees Fahrenheit, but Atlantans start bundling up at 55 degrees. Air conditioner sales often spike after three hot nights in a row. Seasonal products for women pick up even before the weather actually changes. "Men say, 'It's hot, I need shorts,'" Walsh explains. "Women say, 'It's going to be hot soon, so I'll need shorts.'"

Once Planalytics identifies the correlation between weather patterns and product sales, it converts its long-range forecasts into WIMPs. The company has 20 full-time meteorologists on staff, each of whom jealously guards the secret of the forecast methodology. Walsh, however, reveals that since WIMPs are year-over-year comparisons, Planalytics spends a lot of time zeroing out the effects of abnormal weather. Thus, if a once-in-20-year heat wave caused beer sales to spike last July, the WIMP for this July would assume lower sales volume—even before long-range weather forecasts come into play. Walsh says each WIMP is based half on forecast and half on what happened last year, and that Planalytics's claim of 75 percent accuracy refers to a WIMP's magnitude and direction, "meaning that three out of four times when we say 'plus 20 percent,' it will turn out positive and at least around 10 percent." Most Planalytics customers pay between \$100,000 and \$200,000 annually, depending on the

number of WIMP-tracked product categories they order.

Of course, there are those who doubt Planalytics's assertions. Ants Leetmaa, director of NOAA's Geophysical Fluid Dynamics Laboratory at Princeton, N.J., says it's "impossible" to achieve real accuracy in weekly, long-range forecasts. Leetmaa is a bit of a maverick himself—he's famous for having predicted the El Niño of winter 1997-98 six months in advance. "I said central California and Florida might not be ideal holiday destinations," he recalls. "Boy, did I take shit from the chambers of commerce. But it rained for, like, 90 days straight."

Leetmaa explains that forecasters generally rely on either science or history to predict the weather. For short-range predictions, they use physics to model the atmosphere and simulate changes over time. Run on supercomputers like the National Weather Service's new 7.3-teraflop IBM, short-range models have "skill"—meteorology jargon for accuracy greater than flipping a coin—out to seven days. But going even a week out pushes the limits of dynamic modeling. Indeed, in 1963, MIT meteorologist Edward Lorenz, the father of chaos theory, famously asserted that weather is so complex that skill a month out would never be attainable.

For longer-range forecasts, meteorologists depend on statistical models that are less about physics than about historical patterns. Leetmaa's El Niño forecast showed that skill can exist beyond the Lorenz limit, but he was making only broad estimates for average temperatures and precipitation over a full season—in contrast to Planalytics's highly localized weekly forecasts. Then again, it's possible he just got lucky. NOAA's Climate Prediction Center makes year-ahead seasonal predictions every month; on a scale of 0 (no skill) to 100 (right in every region), NOAA's average score is 20.

It's easy to imagine that Planalytics's headquarters is home to a mission control-style weather command center, where anxious forecasters stare at big-screen satellite images to find tomorrow's cold fronts. Fox allows visitors to peer into the forecasting office, which turns out to be just a bunch of gray cubicles. In fact, the only things that distinguish the Planalytics office from those of its industrial-park neighbors are the black-and-white photos of a silver-haired meteorologist named Irving Krick.

Krick was a weather consulting pioneer. He founded the meteorology department at Caltech in 1934 and accepted commercial assignments on the side. He told farmers when to expect rain and movie studios when to schedule outdoor shoots for films such as *Gone With the Wind*. An Army colonel in World War II, he helped pick June 6, 1944, as the meteorologically optimal D-Day. After the war, he quit Caltech to found his own consulting firm, serving clients from Walt Disney to Mexico's Department of Agriculture.

Krick boasted that he could predict the weather years in advance. As early as 1938, he wrote of a technique that involved

tracing patterns of interaction between cold polar air and warm tropical air. Twenty years later, he was using a Remington Rand Univac—one of the first commercially available computers—to make daily forecasts two years out. A 1958 *Business Week* story titled "Charting Weather Years Ahead" said Krick's methodology was based on predicting how "pressure waves" collide in the atmosphere. The story also said Krick resigned from the American Meteorological Society after it declared forecasts more than a month out "experimental and of unproven value."

In 1988, Fox was looking to start a company—"a change-the-world kind of deal"—when he heard about Krick from a friend of a friend. With family money (Fox's father is Philadelphia construction magnate Richard J. Fox, after whom Temple University's Fox School of Business is named), he founded a firm called Strategic Weather Services in 1990 and paid Krick, then 83 years old, an undisclosed sum to reveal the secret of his life's work: his long-range forecasting technique.

Fox's first client was Netherlands-based chemical manufacturer Akzo Nobel Salt. He says his team gave Akzo accurate predictions about which cities would have higher-than-average snowfall—and thus the most lucrative road-salt contracts. But Akzo wasn't a repeat customer. "We gave them a stack of weather data," Fox says, cupping his hand around an imaginary binder. The failure taught Fox that he needed to translate weather data into the language of business planning—an epiphany that led to the creation of WIMPs and, eventually, a longer client list. He changed his company's name to Planalytics in 2000.

It's relatively easy for Planalytics to guard its long-range niche, because most competitors focus on shorter-term forecasting. AccuWeather, for instance, helps ski resorts decide when to make snow, based on forecasts that go 15 days out. WeatherData, of Wichita, Kan., will tell you if a particular tornado is going to hit your factory. Japan-based Weathernews routes ships around storms and tells Japanese convenience stores how weather will affect sales of beer and ramen. Asked about the validity of forecasts going out more than a few weeks, Weathernews Americas president Jeremy Usher laughs and says, "You've been talking to Planalytics." Still, he respects his competitor: "You know Wal-Mart is their client?"

While a Wal-Mart spokesman confirmed that the retail goliath uses Planalytics services, he declined to say much more.

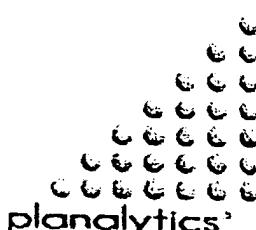
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Ditto for Gap and Sears. Those who will talk assert that Planalytics's WIMPs play a key decision-making role. "We use them to plan sales promotions and inventory," says Sarah Solari, brand manager for Duraflame fireplace logs. "If a retailer places a big order, and Planalytics says the season will end abruptly, I'll hold some back so we don't get it back as returns." Al DeChellis, vice president for specialty brands at Alberto-Culver, a \$2.7 billion consumer products company, says Planalytics is so good at forecasting the cold, dry weather that boosts demand for Static Guard that he cancels in-store displays for low-WIMP months. DeChellis says Planalytics explained its secret forecasting methodology while making its sales pitch. Unfortunately, he doesn't remember much about it: "It was above my head. Anyway, I don't care what's driving the forecast. I just care that it's accurate."

There are only two ways to reconcile Planalytics's testimonials with the rigors of science. One is to believe that Irving Krick found a key to the future that others have overlooked. The other is to recognize, as Fox did long ago, that business planners don't care about weather forecasts. Instead, they care about demand forecasts, which allow them to put products, promotions, and people in the right places at the right times.

That's the real genius of the Planalytics WIMP. Remember, half of what it conveys are historical correlations between sales and weather. Armed with those insights, business planners can better distinguish how much of last year's growth in, say, bottled water sales was due to the brilliance of the marketing team, and how much resulted from a heat wave. Even if you assume that Planalytics's forecasters spend their days randomly flipping coins, WIMPs allow the company's customers to make better demand forecasts. Alberto-Culver's DeChellis agrees that historical analysis is most of what he's paying for. "Before Planalytics, we analyzed how different things affected sales," he says. "But we never looked at the weather."

Does Fox concede that his long-range forecasting is really just a hook—a snappy sales tool to sell the real work his company does? Well, almost. "For all the sexy talk about forecasting," he says, "what we really do is help people plan." There's value in that, whether or not Planalytics knows if the sun will shine this time next year. ♦





Strategic Weather Services

1826 MORRIS DRIVE • WAYNE, PA 19087
(610) 640-9483 • FAX (610) 640-0147

William E. Kirk
21 Chestnut Ridge Circle
Easton, PA 18042-1466

April 16, 1997

Dear Bill:

This Employment Offer Letter will serve to confirm our offer of employment with Strategic Weather Services as a Weather Applications and Production Manager. On behalf of the company, I am very pleased to welcome you as a key player in the future, continued growth of our company.

As we discussed on April 9, 1997, we would like to offer you a starting salary of \$38,500.00 per year to commence on May 5, 1997. Compensation may be reviewed and increased based upon your performance. Naturally, compensation, is contingent upon continued employment and shall be paid as earned.

At that time you commence employment, you must execute an Employment Letter Agreement which, among other things, will provide that you are an at-will employee, that any and all inventions conceived and works authored by you shall be the property of the company, that you will maintain in strict confidence all company confidential information both during and after your employment, and that for a period of five (5) years after the termination of your employment, you will not compete anywhere with the company in the field of long-range weather forecasting or in the use, translation, sales, marketing, market analysis, consulting, and product development involving computer based systems and programs using any application of the Strategic Weather Services long-range weather information or techniques.

Enclosed is also a brief summary of our benefits package for your additional consideration.

William E. Kirk
April 16, 1997
Page Two

We would appreciate it if you would acknowledge acceptance of the terms of employment as set forth above by executing the copy of this letter enclosed herewith. When we receive your acknowledged acceptance, we will execute an employment agreement document which will describe the mutually agreed upon terms of your employment with Strategic Weather Services.

Very truly yours,

STRATEGIC WEATHER SERVICES

WILLIAM S. WEAVING, Vice President
Weather Services

THE ABOVE TERMS ARE ACCEPTED AND APPROVED:
Date: 21 April, 1997

By: William E. Kirk
William E. Kirk

Addendum: Per my discussion with Mr. Bill Weaving on 17 April, I would like to take June 26-27 off without pay. I have a non-refundable deposit for the Vermont Tulip Festival! p.s.t.



Strategic Weather Services

1325 MORRIS DRIVE • WAYNE, PA 19087
(610) 640-9485 • FAX (610) 640-0147

William E. Kirk
21 Chestnut Ridge Circle
Easton, PA 18042-1466

April 30, 1997

Dear Bill:

This is the Employment Letter Agreement referred to and incorporated by reference into our Employment Offer and Acceptance letter of April 16, 1997. Our Employment Offer and Acceptance letter of April 16, 1997 is also incorporated by reference into this Employment Letter Agreement.

To make this letter concise and easy to understand, I have used the following convention. You or employee means you, William E. Kirk. We or Company means Strategic Weather Services. This agreement is between you and the Company.

We have prepared this employment letter agreement so that you will have a clear understanding before you begin work about your benefits, duties and obligations from and to our Company. If you should have any questions about anything in this letter, please let me know immediately. I can be reached through our Company headquarters in Wayne, PA, (610) 640-9485, or extension 1913. As you know, you must have executed this letter before you can start work on May 5, 1997.

From our pre-employment discussions, you know that the Company's entire business rests on its confidential information used in developing, making and enhancing long-range weather forecasts, and in the long-range weather forecasts that are produced, and in the application of these long-range weather forecasts either manually or via computer systems and software to specific business applications and functions, such as, but not limited to, planning, allocation, replenishment, distribution, and store operations. By long-range weather forecasts, we mean forecasting weather five or more days beyond the day when the forecast is made, and the manual and computer application of these forecasts to specific problems.

William E. Kirk

April 30, 1997

Page Two

The Company's ability to develop, make and enhance long-range weather forecasts is based on the use of very valuable proprietary methods, procedures, techniques, strategies, data, and computer programs and/or systems, which we call Company Confidential Information or Confidential Information. The Company considers all of this Company Confidential Information key to its business, health, growth and future. In order to maintain the trade secret status of this Confidential Information, you must comply with the requirements set out in this letter and in all subsequent requirements established by the Company.

For your information, we are an incorporated company duly formed and licensed under the laws of the Commonwealth of Pennsylvania. We are engaged in the business of developing, making and providing long-range weather forecasting and consulting services. Our principal place of business is at 1325 Morris Drive, Wayne, Pennsylvania 19087. Our offices at 610 South Belardo Road, Palm Springs, California are referred to in this letter as the "California Premises."

You currently reside at 21 Chestnut Ridge Circle, Easton, PA 18042-1466

You should also know that the Company (or its predecessor in interest), Irving P. Krick Associates, Inc. and certain other corporations entered into an Asset Purchase Agreement ("Related Agreement") dated March 23, 1990 pursuant to which Company purchased all the assets of those corporation(s).

In your previous self-employment, you provided forecasts using forecast systems, techniques, tools, computer models, etc. commonly and openly available throughout the public and government meteorology communities used to prepare short-, medium-, and extended-range weather forecasts. You did no long-range weather forecasting using a system the same or materially similar to the forecast system developed by Irving P. Krick Associates, Inc. or techniques and tools unique and proprietary to the Company, nor have you ever worked with the specific type of weather support we provide to our clients in terms of application specific computer programs and/or systems, marketing, sales, consulting, analyzing or marketing research.

We will employ you in a position involving weather services, including product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information. Since you have never done this specific type of product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information, nor have you ever been involved with the Strategic Weather Services computer applications involving weather information, we will teach you our proprietary systems and methodologies through formal training and on-the-job activities and tasks. As such, you will be

William E. Kirk
April 30, 1997
Page Three

exposed to a considerable amount of the Company Confidential Information. You agree to keep all Company Confidential Information strictly confidential both during and after your employment.

All inventions involving long-range weather forecasting including the use, translation, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information, in any way conceived, made and/or reduced to practice by you during your employment or for one year thereafter shall belong to the Company. Similarly, all works of authorship and copyrights in such works of authorship involving long-range weather forecasting including the use, translation, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information, in any way fixed in any tangible medium of expression by you during your employment or for one year thereafter shall belong to the Company. You will execute assignments conveying such right, title and interest to the Company. You will also cooperate fully with the Company in obtaining patents and copyright registrations on such inventions and works of authorship. You also agree not to compete with the company anywhere in the world in any aspect of long-range weather forecasting including the use, translation, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information for five (5) years after your employment.

The Company engages you as a Weather Applications and Production Manager with such specific authority and obligations as are assigned to you by the Company from time to time. You are an at-will employee.

You shall devote your full working time, energy, skill and experience to the performance of your duties as are redefined by the Company from time to time. During your employment, you shall not engage in any other business without approval of the Company.

You, without the express consent of the Board of Directors of Company, shall have no apparent or implied authority to pledge the credit of Company; to bind the Company under any contract, note, mortgage or other agreement outside the ordinary course of Company's business; to release or discharge any debt due Company; or to sell, mortgage, transfer or otherwise dispose of any assets of Company.

Your compensation is set out in my employment offer and acceptance letter of date, which is incorporated into this letter employment agreement and vice versa.

William E. Kirk

April 30, 1997

Page Four

This agreement shall be effective immediately and shall continue for the term of your employment. We shall provide you with fourteen (14) days notice for termination of employment without cause. At our option, upon providing this notice, we can ask you to immediately cease your employment and receive fourteen (14) days of severance pay.

Upon an immediate basis, your employment with the Company may be terminated for Cause. "Cause" is defined as:

- (1) The theft, misappropriation or embezzlement of Company's funds or property (tangible or intangible);
- (2) Conviction of a first degree misdemeanor or felony;
- (3) Nonperformance by you of your duties hereunder despite at least two prior written warnings (specifically setting forth in detail the facts constituting the nonperformance being complained of) and reasonable opportunity to correct such deficiencies;
- (4) Repeated and consistent failure of you to render the prescribed number of hours of service on Company's premises or pursuant to its direction;
- (5) Consistent failure to render adequate performance of your duties despite one or more warnings and reasonable opportunity to correct such deficiencies;
- (6) One or more material breaches of the written rules, regulations and/or policies of the Company, gross insubordination or the clear failure of you to conform to accepted business or professional standards.

Your employment may also be terminated by your death or Permanent Disability as such is defined below.

For purposes of this Agreement, "Disability" is defined as a physical or a mental condition which prevents you from performing your principal duties.

"Permanent Disability" is defined as a Disability which continues or which in the opinion of a reputable medical doctor will continue, for a period of six (6) months.

William E. Kirk
April 30, 1997
Page Five

In the event of a dispute as to the existence, nature and/or extent of a Disability, or Permanent Disability, Company and you shall jointly select a qualified physician to examine you and make a report thereon. The report of the selected physician shall be binding upon the Company and you. If the Company and you are unable to agree on a physician within five (5) days of receipt of a written request by either party implementing this Paragraph, then each party shall, by written notice to the other within ten (10) days thereafter, name a qualified physician and the two (2) so chosen physicians shall, within five (5) days, select a third qualified physician who shall examine you and make prompt findings on the issue of disability.

The findings of the selected physician shall be final, binding, unappealable and conclusive upon the Company and you. In addition, the findings shall be specifically enforceable or confirmed in a Court of competent jurisdiction. In the event you or the Company fails to name a physician within the time limit prescribed, the other party may name a physician to act for the party so failing.

We expect that you will make a significant contribution to the Company in the area of using, translating, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information and enhancing the utility of the long-range weather forecasts. We will invest considerable time and effort in bringing you "up to speed" on our proprietary system and method. All of this should help you and the Company in creating and maintaining its competitive edge.

You shall promptly disclose to Company all ideas, processes, concepts, inventions, works of authorship and improvements (enhancements) coming within the scope of the Company's business or relating to any work carried on by the Company or to any problems specifically assigned to you, which are conceived, made, reduced to practice, or fixed in any tangible medium of expression by you alone or with others during your employment and one (1) year thereafter. This shall be done regardless of whether or not such ideas, processes, concepts, inventions, works of authorship and improvements are conceived, made, reduced to practice or fixed in any tangible medium of expression during actual working hours and/or with Company equipment, supplies or resources.

All such ideas, processes, concepts, inventions, works of authorship and improvements and all intellectual property rights in the same (patent, copyright, trade secret, trademark, contract) shall be the sole and exclusive property of the Company worldwide. You shall promptly execute any assignments necessary to perfect title thereto.

William E. Kirk
April 30, 1997
Page Six

In the event any such idea, process, concept, invention, work of authorship, or improvement shall be deemed by the Company to be patentable or copyrightable, you shall (at the expense of the Company) assist the Company in obtaining a patent(s) or copyright(s) thereon. You shall also execute all documents and do all things necessary or proper to obtain letters, patent or copyright registration and to vest the Company with full title thereto.

Without diminishing Company's rights as set forth in this letter, you shall be granted due acknowledgement for the part you play in these innovative activities, subject to maintaining strictly confidential the Company's Confidential Information.

Because of the nature of your work in the area of client servicing including product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information and enhancing the utility of the long-range weather forecasts, you will in the course of time acquire valuable information and skill with respect to the business operations of Company and its trade secrets (also called Company Confidential Information in this letter), including by way of illustration but not limitation, knowledge of Company's weather forecasting methods, development and implementation of weather models, computer software programs, formulas, processes, data, customer lists, forms of agreements and contracts used in business operations, strategic plans and advertising and marketing methods, techniques and strategies.

You understand and recognize that the Company will suffer irreparable injury if any Company Confidential Information (trade secrets), as illustrated but not limited to those referred to above, are obtained by any competing person or entity or should you directly or indirectly compete with the Company for its customer's business.

You shall not during employment, directly or indirectly, become engaged in any business in competition with Company's business.

You recognize and acknowledge that the Company's Confidential Information (trade secrets) as referred to above whether or not documented in any form constitutes valuable, special and unique assets of Company's business. You will not, during or after your employment, directly or indirectly divulge or disclose in any fashion any information with regard to such Company Confidential Information (or the documentation thereof) to any person, firm, corporation, association or other entity for any reason or purpose whatsoever. You further covenant that you will not at any time remove or otherwise appropriate any documentation of company Confidential Information from the Company's premises unless specifically approved by Company in advance; such specifically approved removal shall be only for a specified temporary period.

William E. Kirk
April 30, 1997
Page Seven

In further consideration of this agreement and our Employment Offer and Acceptance Letter of April 16, 1997, for a period of five (5) years after the termination of your employment, for any reason what-so-ever, you shall not, anywhere in the world, directly or indirectly, own, manage, operate, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, or control of any business enterprise which engages in developing, using, consulting or providing long-range weather forecasting utilizing a system the same or materially similar to a system developed by Irving P. Krick Associates, Inc. or the Company and/or services and/or which solicits the business of Company's customers.

It is agreed by the Company and you that if any portion of this restrictive covenant is held by a court to be unreasonable, arbitrary or against public policy, the covenant not to compete may be construed to be divisible both as to time and geographical area; and, each month of the specified period shall be deemed to be a separate period of time, and the smallest governmental subdivision in the restricted area (e.g. municipality, township, province, etc.) shall be deemed to be a separate geographical area, so that the maximum lesser period and area shall remain effective so long as the time or area is not determined to be unreasonable, arbitrary or against public policy.

During or subsequent to the termination of your employment by either party for any reason, you shall not contact, solicit or attempt to contact or solicit any person who is employed by Company at the time of such termination of employment for the purpose of inducing them to terminate their employment with Company and/or accept employment with you or any business which employs, directly or indirectly, you, or which you directly or indirectly, owns, manages, operates, consults with, participates in or is connected with in any manner.

Both parties agree that the breach of this restrictive covenant by you will cause irreparable harm and injury to the Company. Both parties agree that the only effective and adequate remedy available to the Company for such breach is by injunctive relief both preliminary and final. In addition, the Company and you agree to the jurisdiction of the equitable powers of the appropriate court to obtain such relief. The parties further agree that the restrictive covenant set forth herein shall be extended for a period of time equal to any period of time during which you are in violation of its provisions.

In the event you should use or reveal to any other person or entity the Company Confidential Information as defined above, such disclosure will be considered a continuing violation on a daily basis for so long a period of time as such Company Confidential Information is made use of by you, or any other person or entity through you.

This agreement shall be binding upon and the benefits shall accrue to the Company and to you, and our respective heirs, administrators, successors and assigns.

William E. Kirk
April 30, 1997
Page Eight

The waiver by the Company of the breach by you of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by you.

This agreement and the Employment Offer and Acceptance Letter of April 16, 1997, contain the entire agreement between you and the Company. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any such change, waiver, modification, construction, extension or discharge is sought.

All of the provisions of this agreement are distinct and severable. If any provisions should, for any reason, be held to be invalid or unenforceable, then the valid and enforceable provisions hereof shall continue in full force and effect.

This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

If you agree with the terms and conditions of this Employment Letter Agreement and the Employment Offer and Acceptance Letter of April 16, 1997, please indicate this by signing and dating both original copies of this letter in the spaces indicated below. Return one executed copy to me and keep one set for your review and records.

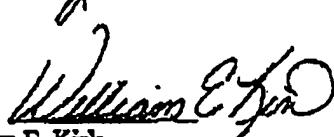
We look forward to a long and beneficial employment relationship. I look forward to seeing you soon.

Sincerely,

STRATEGIC WEATHER SERVICES


WILLIAM S. WEAVING, Vice President
Weather Services

THE ABOVE TERMS ARE ACCEPTED AND APPROVED,
Date: May 2, 1997

By: 
William E. Kirk



Strategic Weather Services

1825 MOREIS DRIVE • WAYNE, PA 19087-5521
(610) 640-8485 • FAX (610) 640-0147

January 22, 1999

Mr. John J. Grum
34 Forest Road
Allendale, NJ 07401

Dear John:

This Employment Offer and Acceptance Letter will serve to confirm our offer, and your acceptance, of employment with Strategic Weather Services as a Vice President, Business Development.

As a Vice President, Business Development, you will be responsible for developing, expanding and growing the company's business activities with new and existing customers within the company's present and future markets. The position will require a great deal of interaction with the company's senior management team, as well as regular contact with key customer contacts.

You will be physically based in SWS' Wayne, PA office.

You will be required to visit prospective and existing clients that are assigned to you to position and sell the company's products and services, and provide advice to assist the company's clients in obtaining the desired business benefits from the company's products and services. As an advisor to the company's clients, you will develop and maintain trusting client relationships to further enhance the company's reputation and the quality of service and advice provided. You will leverage these customer alliances to continually seek out new opportunities to sell the company's products, services and advice.

The company's strategy is to build revenues through direct sales, as well as third-party supplier relationships and strategic alliances. In keeping with the company's commitment to develop new business opportunities, you will be expected to coordinate and prepare business proposals, as well as deliver effective sales presentations.

With support from a team of trained meteorologists, project managers, and business analysts, you will be responsible for identifying customer needs related to weather-impacted decisions, as well as providing detailed and timely advisory solutions.

As a key member of Strategic Weather Services, you will be expected to actively promote the company's vision, strategy, and services. You will also be expected to ensure that the company's edict of providing quality service and support is applied to all customers assigned to you.

Mr. John J. Grum
January 22, 1999
Page 2 of 3

You will commence employment February 1, 1999 at the annual base salary of \$75,000.00. In addition to your base salary, you will receive a \$3,000 advance per month for the first 3 months of your employment. This advance is accountable, in that it will be offset against actual commissions earned by you; but it is not recoverable by SWS, should you leave our employ. The specifics of SWS' 1999 Sales Incentive Program (SIP) are as follows:

1. The SIP will be calculated based on the annual (January 1, 1999 through December 31, 1999) contracted amount of sales you close from clients and prospects that are assigned to you. Details are as follows:

- 1.1 Annual sales quota is \$1,200,000; monthly quota is \$100,000
 - 1.2 Grace period for new hires is 3 months from start date. Annual Quota period starts after completion of the grace period.
 - 1.3 First performance review will be completed 6 months after hire date

1.4 Commission schedule:

<u>Total Annual Contracts</u>	<u>Commission %</u>
\$0 - \$500,000	3%
\$500,000 - \$800,000	5%
\$800,001 - \$1,100,000	7%
\$1,100,000 and up	9%

- 1.5 An additional 1% will be added to each tier of the commission schedule, monthly, only if monthly quota is met.
 - 1.6 All commissions are computed monthly and paid on the second pay period following each month end.
 - 1.7 Contract Criteria are as follows:
 - 1.7a A minimum of 30% of contract fees is due upon contract execution
 - 1.7b 100% of the contract amount invoiced upon delivery or completion of all services, per contract. If not met, commissions will be paid as the contract is billed.
 - 1.8 Monthly commission calculation will be reduced by accounts greater than ninety days past due.
2. There will be no vesting of any accounts. In the event you leave the employ of SWS for any reason, all SIP funds earned to the date of termination of employment as described above, will be paid within thirty (30) days of the date of termination of employment. No further payments will be earned or due after such termination date.

Mr. John J. Grum
January 22, 1999
Page 3 of 3

3. It is understood that as SWS grows, the SIP will evolve and that its terms and conditions as outlined in this letter may need to be revised. We will review this Sales Incentive Program annually.

Naturally, compensation, including SIP earnings, is contingent upon continued employment and shall be paid as earned.

In addition you are eligible for Benefits including the following: eight (8) paid company holidays per year; seventeen (17) paid days off per year (paid days off begin accruing after six months of service); paid short and long-term disability; paid life insurance (equal to 75% of your salary - up to \$50,000); paid group medical insurance for yourself; group dental insurance; Section 125 Plan (which allows for medical benefits for your dependents and dental benefits to be paid through payroll deduction, with before tax dollars, thus lowering your gross pay subject to tax); and 401k plan after three months of service.

As your present residence is over a 2-hour drive from our office, SWS will provide you with temporary accommodation, in the Wayne, PA area for up to the first three (3) months of your employment.

At that time you commence employment, you must execute an Employment Letter Agreement which, among other things, will provide that you are an at-will employee, that any and all inventions conceived and works authored by you shall be the property of the company, that you will maintain in strict confidence all company confidential information both during and after your employment, and that for a period of five (5) years after the termination of your employment, you will not compete anywhere with the company in the field of long-range weather forecasting or in the use, translation, sales, marketing, consulting, or customer relations involving computer based systems and programs using long-range weather information. This letter and the Employment Letter Agreement are incorporated into each other.

If these terms are acceptable, please acknowledge acceptance of the terms of employment as set forth above by executing the copy of this letter enclosed herewith and the Employment Letter Agreement which is also enclosed.

Very truly yours,
STRATEGIC WEATHER SERVICES

Christopher P. Cawthorn, Sr.
Christopher P. Cawthorn
Executive Vice President

THE ABOVE TERMS ARE ACCEPTED AND APPROVED:

Dated: 1/25/99 1999

By: John J. Grum
John J. Grum



Strategic Weather Services

1325 MORRIS DRIVE • WAYNE, PA 19087-5521
(610) 640-9485 • FAX (610) 640-0147

January 22, 1999

Mr. John J. Grum
34 Forest Road
Allendale, NJ 07401

Dear John:

This is the Employment Letter Agreement referred to and incorporated by reference into our Employment Offer and Acceptance letter of January 22, 1999. Our Employment Offer and Acceptance letter of January 22, 1999 is also incorporated by reference into this Employment Letter Agreement.

To make this letter concise and easy to understand, I have used the following convention. You or employee means you, John J. Grum. We or Company means Strategic Weather Services. This agreement is between you and the Company.

We have prepared this employment letter agreement so that you will have a clear understanding before you begin work about your benefits, duties and obligations from and to our Company. If you should have any questions about anything in this letter, please let me know immediately. I can be reached through our Company headquarters in Wayne, PA, at (610) 640-9485. As you know, you must have executed this letter and our Employment Offer and Acceptance letter, of January 22, 1999 before you can start work on February 1, 1999.

From our pre-employment discussions, you know that the Company's business rests on its confidential information used in developing, making and enhancing long-range weather forecasts, and in the long-range weather forecasts that are produced, and in the application of these long-range weather forecasts either manually or via computer systems and software to specific business applications and functions, such as, but not limited to, planning, allocation, replacement, distribution, and store operations. By long-range weather forecasts, we mean forecasting weather five or more days beyond the day when the forecast is made, and the manual and computer application of these forecasts to specific problems.

The Company's ability to develop, make and enhance long-range weather forecasts is based on the use of very valuable proprietary methods, procedures, techniques, strategies, data, and computer programs and/or systems, which we call Company Confidential Information or Confidential Information. The Company considers all of this Company Confidential Information key to its business, health, growth and future. In order to maintain the trade secret status of this Confidential Information, you must comply with the requirements set out in this letter and in all subsequent requirements established by the Company.

Mr. John J. Grum
January 22, 1999
Page 2 of 7

For your information, we are a corporation duly formed and licensed under the laws of the Commonwealth of Pennsylvania. We are engaged in the business of developing, making and providing short and long-range weather forecasting and weather related consulting services. Our principal place of business is at 1325 Morris Drive, Wayne, Pennsylvania 19087. Our offices at 610 South Belardo Road, Palm Springs, California are referred to in this letter as the "California Premises."

You reside at 34 Forest Road, Allendale, NJ 07401

You should also know that the Company (or its predecessor in interest), Irving P. Krick Associates, Inc. and certain other corporations entered into an Asset Purchase Agreement ("Related Agreement") dated March 23, 1990 pursuant to which Company purchased all the assets of those corporation(s).

In your prior employment you have done no short or long-range weather forecasting, nor have you worked with weather in terms of application specific computer programs and/or systems, marketing, sales, consulting, analyzing or marketing research.

We will employ you in a position involving sales, marketing, consulting, and customer relations, regarding our computer based systems and programs using short and long-range weather information. As such, you will be exposed to a considerable amount of the Company Confidential Information. You agree to keep all Company Confidential Information strictly confidential both during and after your employment.

All inventions involving short and long-range weather forecasting including the use, translation, sales, marketing, consulting, and customer relations, involving computer based systems and programs using short and long-range weather information, in any way conceived, made and/or reduced to practice by you during your employment or for one year thereafter shall belong to the Company. Similarly, all works of authorship and copyrights in such works of authorship involving short and long-range weather forecasting including the use, translation, sales, marketing, consulting, and customer relations, involving computer based systems and programs using short and long-range weather information, in any way fixed in any tangible medium of expression by you during your employment or for one year thereafter shall belong to the Company. You will execute assignments conveying such right, title and interest to the Company. You will also cooperate fully with the Company in obtaining patents and copyright registrations on such inventions and works of authorship.

You also agree not to compete with the company anywhere in the world in any aspect of long-range weather forecasting including the use, translation, sales, marketing, consulting, or customer relations, involving computer based systems and programs using long-range weather information for five (5) years after your employment.

Mr. John J. Grum
January 22, 1999
Page 3 of 7

Company engages you as a Vice President, Business Development with such specific authority and obligations as are assigned to you by the Company from time to time. You are an at-will employee.

You shall devote your full working time, energy, skill and experience to the performance of your duties as are redefined by the Company from time to time. During your employment, you shall not engage in any other business.

You, without the express consent of the Board of Directors of Company, shall have no apparent or implied authority to pledge the credit of Company, to bind the Company under any contract, note, mortgage or other agreement outside the ordinary course of Company's business; to release or discharge any debt due Company, or to sell, mortgage, transfer or otherwise dispose of any assets of Company.

Your compensation is set out in my employment offer and acceptance letter of date, which is incorporated into this letter employment agreement and vice versa.

This agreement shall be effective immediately and shall continue for the term of your employment. We shall provide you with fourteen (14) calendar days notice for termination of employment without cause. At our option, upon providing this notice, we can ask you to immediately cease your employment and receive ten (10) paid days of severance pay, based upon your base salary of \$75,000 per year.

Upon an immediate basis, your employment with the Company may be terminated for Cause. "Cause" is defined as:

- (1) The theft, misappropriation or embezzlement of Company's funds or property (tangible or intangible);
- (2) Conviction of a first degree misdemeanor or felony;
- (3) Nonperformance by you of your duties hereunder despite at least two prior written warnings (specifically setting forth in detail the facts constituting the nonperformance being complained of) and reasonable opportunity to correct such deficiencies;
- (4) Repeated and consistent failure of you to render the prescribed number of hours of service on Company's premises or pursuant to its direction;
- (5) Consistent failure to render adequate performance of your duties despite one or more warnings and reasonable opportunity to correct such deficiencies;
- (6) One or more material breaches of the written rules, regulations and/or policies of the Company, gross insubordination or the clear failure of you to conform to accepted business or professional standards.

Mr. John J. Grum
January 22, 1999
Page 4 of 7

Your employment may also be terminated by your death or Permanent Disability as such is defined below.

For purposes of this Agreement, "Disability" is defined as a physical or a mental condition which prevents you from performing your principal duties.

"Permanent Disability" is defined as a Disability which continues or which in the opinion of a reputable medical doctor will continue, for a period of six (6) months.

In the event of a dispute as to the existence, nature and/or extent of a Disability, or Permanent Disability, Company and you shall jointly select a qualified physician to examine you and make a report thereon. The report of the selected physician shall be binding upon the Company and you. If the Company and you are unable to agree on a physician within five (5) days of receipt of a written request by either party implementing this Paragraph, then each party shall, by written notice to the other within ten (10) days thereafter, name a qualified physician and the two (2) so chosen physicians shall, within five (5) days, select a third qualified physician who shall examine you and make prompt findings on the issue of disability.

The findings of the selected physician shall be final, binding, unappealable and conclusive upon the Company and you. In addition, the findings shall be specifically enforceable or confirmed in a Court of competent jurisdiction. In the event you or the Company fails to name a physician within the time limit prescribed, the other party may name a physician to act for the party so failing.

We expect that you will make a significant contribution to the Company in the area of sales, marketing, consulting, and customer relations regarding our consulting and product development involving computer based systems and programs using short and long-range weather information and enhancing the utility of the short and long-range weather forecasts. We will invest considerable time and effort in bringing you "up to speed" on our proprietary system and methodologies. All of this should help you and the Company in creating and maintaining its competitive edge.

You shall promptly disclose to Company all ideas, processes, concepts, inventions, works of authorship and improvements (enhancements) coming within the scope of the Company's business or relating to any work carried on by the Company or to any problems specifically assigned to you, which are conceived, made, reduced to practice, or fixed in any tangible medium of expression by you alone or with others during your employment and one (1) year thereafter. This shall be done regardless of whether or not such ideas, processes, concepts, inventions, works of authorship and improvements are conceived, made, reduced to practice or fixed in any tangible medium of expression during actual working hours and/or with Company equipment, supplies or resources.

Mr. John J. Grum
January 22, 1999
Page 5 of 7

All such ideas, processes, concepts, inventions, works of authorship and improvements and all intellectual property rights in the same (patent, copyright, trade secret, trademark, and contract) shall be the sole and exclusive property of the Company worldwide. You shall promptly execute any assignments necessary to perfect title thereto.

In the event any such idea, process, concept, invention, work of authorship, or improvement shall be deemed by the Company to be patentable or copyrightable, you shall (at the expense of the Company) assist the Company in obtaining a patent(s) or copyright(s) thereon. You shall also execute all documents and do all things necessary or proper to obtain letters, patent or copyright registration and to vest the Company with full title thereto.

Without diminishing Company's rights as set forth in this letter, you shall be granted due acknowledgment for the part you play in these innovative activities, subject to maintaining strictly confidential the Company's Confidential Information.

Because of the nature of your work in the area of sales, marketing, consulting, and customer relations involving computer based systems and programs using short and long-range weather information and enhancing the utility of the long-range weather forecasts, you will in the course of time acquire valuable information and skill with respect to the business operations of Company and its trade secrets (also called Company Confidential Information in this letter), including by way of illustration but not limitation, knowledge of Company's weather forecasting methods, development and implementation of weather models, computer software programs, formulas, processes, data, customer lists, forms of agreements and contracts used in business operations, strategic plans and advertising and marketing methods, techniques and strategies.

You understand and recognize that the Company will suffer irreparable injury if any Company Confidential Information (trade secrets), as illustrated but not limited to those referred to above, are obtained by any competing person or entity or should you directly or indirectly compete with the Company for its customer's business.

You shall not during employment, directly or indirectly, become engaged in any business in competition with Company's business.

You recognize and acknowledge that the Company's Confidential Information (trade secrets) as referred to above whether or not documented in any form constitutes valuable, special and unique assets of Company's business. You will not, during or after your employment, directly or indirectly divulge or disclose in any fashion any information with regard to such Company Confidential Information (or the documentation thereof) to any person, firm, corporation, association or other entity for any reason or purpose whatsoever. You further covenant that you will not at any time remove or otherwise appropriate any documentation of company Confidential Information from the Company's premises unless specifically approved by Company in advance; such specifically approved removal shall be only for a specified temporary period.

Mr. John J. Grum
January 22, 1999
Page 6 of 7

In further consideration of this agreement and our Employment Offer and Acceptance Letter of January 22, 1999, for a period of five (5) years after the termination of your employment, for any reason what-so-ever, you shall not, anywhere in the world, directly or indirectly, own, manage, operate, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, or control of any business enterprise which engages in developing, using, consulting or providing long-range weather forecasting utilizing a system the same or materially similar to a system developed by Irving P. Krick Associates, Inc. or the Company and/or services and/or which solicits the business of Company's customers.

It is agreed by the Company and you that if any portion of this restrictive covenant is held by a court to be unreasonable, arbitrary or against public policy, the covenant not to compete may be construed to be divisible both as to time and geographical area; and, each month of the specified period shall be deemed to be a separate period of time, and the smallest governmental subdivision in the restricted area (e.g. municipality, township, province, etc.) shall be deemed to be a separate geographical area, so that the maximum lesser period and area shall remain effective so long as the time or area is not determined to be unreasonable, arbitrary or against public policy.

During or subsequent to the termination of your employment by either party for any reason, you shall not contact, solicit or attempt to contact or solicit any person who is employed by Company at the time of such termination of employment for the purpose of inducing them to terminate their employment with Company and/or accept employment with you or any business which employs, directly or indirectly, you, or which you directly or indirectly, owns, manages, operates, consults with, participates in or is connected with in any manner.

Both parties agree that the breach of this restrictive covenant by you will cause irreparable harm and injury to the Company. Both parties agree that the only effective and adequate remedy available to the Company for such breach is by injunctive relief both preliminary and final. In addition, the Company and you agree to the jurisdiction of the equitable powers of the appropriate court to obtain such relief. The parties further agree that the restrictive covenant set forth herein shall be extended for a period of time equal to any period of time during which you are in violation of its provisions.

In the event you should use or reveal to any other person or entity the Company Confidential Information as defined above, such disclosure will be considered a continuing violation on a daily basis for so long a period of time as such Company Confidential Information is made use of by you, or any other person or entity through you.

This agreement shall be binding upon and the benefits shall accrue to the Company and to you, and our respective heirs, administrators, successors and assigns.

Mr. John J. Grum
January 22, 1999
Page 7 of 7

The waiver by the Company of the breach by you of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by you.

This agreement and the Employment Offer and Acceptance Letter of January 22, 1999 contain the entire agreement between you and the Company. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any such change, waiver, modification, construction, extension or discharge is sought.

All of the provisions of this agreement are distinct and severable. If any provisions should, for any reason, be held to be invalid or unenforceable, then the valid and enforceable provisions hereof shall continue in full force and effect.

This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

If you agree with the terms and conditions of this Employment Letter Agreement and the Employment Offer and Acceptance Letter of January 22, 1999, please indicate this by signing and dating both original copies of this letter in the spaces indicated below and both original copies of the January 22, 1999 Employment Offer and Acceptance Letter in the spaces indicated. Return one executed copy of each to me and keep one set for your review and records.

We look forward to a long and beneficial employment relationship.

Sincerely,

STRATEGIC WEATHER SERVICES

Christopher P. Cawthon/SPS

Christopher P. Cawthon
Executive Vice President

THE ABOVE TERMS ARE ACCEPTED AND APPROVED.

Date: 1/25, 1999

By:


John J. Grum



Strategic Weather Services

1326 MORRIS DRIVE • WAYNE, PA 19087-5521
(610) 840-9485 • FAX (610) 840-0147

August 3, 1999

Mr. James K. Egan
1628 North Valley Road
Malvern, PA 19355

Dear Jim:

This Employment Offer and Acceptance Letter will serve to confirm our offer, and your acceptance, of employment with Strategic Weather Services as a Vice President, Business Development, for Strategic Weather Services' Retail and Manufacturing Business Unit.

As a Vice President, Business Development, you will be responsible for developing, expanding and growing the company's business activities with new and existing customers within the company's present and future markets. The position will require a great deal of interaction with the company's senior management team, as well as regular contact with key customer contacts.

You will be physically based in SWS' Wayne, PA office.

You will be required to visit prospective and existing clients that are assigned to you to position and sell the company's products and services, and provide advice to assist the company's clients in obtaining the desired business benefits from the company's products and services. As an advisor to the company's clients, you will develop and maintain trusting client relationships to further enhance the company's reputation and the quality of service and advice provided. You will leverage these customer alliances to continually seek out new opportunities to sell the company's products, services and advice.

The company's strategy is to build revenues through direct sales, as well as third-party supplier relationships and strategic alliances. In keeping with the company's commitment to develop new business opportunities, you will be expected to coordinate and prepare business proposals, as well as deliver effective sales presentations.

With support from a team of trained meteorologists, project managers, and business analysts, you will be responsible for identifying customer needs related to weather-impacted decisions, as well as providing detailed and timely advisory solutions.

As a key member of Strategic Weather Services, you will be expected to actively promote the company's vision, strategy, and services. You will also be expected to ensure that the company's edict of providing quality service and support is applied to all customers assigned to you.

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PALM SPRINGS

Mr. James K. Egan
August 3, 1999
Page 2 of 3

You will commence employment August 16, 1999 at the annual base salary of \$75,000.00. In addition to your base salary, you will receive a \$4,000 advance per month through December 1999. This advance is accountable, in that it will be offset against actual commissions earned by you; but it is not recoverable by SWS, should you leave our employ. The specifics of SWS' 1999 Sales Incentive Program (SIP) are as follows:

1. The SIP will be calculated based on the annual (January 1, 1999 through December 31, 1999) contracted amount of sales you close from clients and prospects that are assigned to you. Details are as follows:

1.1 Annual sales quota is \$1,200,000

1.2 First performance review will be completed 6 months after hire date

1.3 Commission schedule:

<u>Total Annual Contracts</u>	<u>Commission %</u>
\$0 - \$500,000	4%
\$500,000 - \$800,000	6%
\$800,001 - \$1,100,000	8%
\$1,100,000 and up	10%

1.4 All commissions are computed monthly and paid on the second pay period following each month end.

1.7 Contract Criteria are as follows:

1.7a A minimum of 30% of contract fees is due upon contract execution

1.7b 100% of the contract amount invoiced upon delivery or completion of all services, per contract. If not met, commissions will be paid as the contract is billed.

1.8 Monthly commission calculation will be reduced by accounts greater than ninety days past due.

2. There will be no vesting of any accounts. In the event you leave the employ of SWS for any reason, all SIP funds earned to the date of termination of employment as described above, will be paid within thirty (30) days of the date of termination of employment. No further payments will be earned or due after such termination date.

Mr. James K. Egan

August 3, 1999

Page 3 of 3

3. It is understood that as SWS grows, the SIP will evolve and that its terms and conditions as outlined in this letter may need to be revised. We will review this Sales Incentive Program annually.

Naturally, compensation, including SIP earnings, is contingent upon continued employment and shall be paid as earned.

In addition you are eligible for Benefits including the following; eight (8) paid company holidays per year; seventeen (17) paid days off per year (paid days off begin accruing after six months of service); paid short and long-term disability; paid life insurance (equal to 75% of your salary - up to \$50,000); paid group medical insurance for yourself; group dental insurance; Section 125 Plan (which allows for medical benefits for your dependents and dental benefits to be paid through payroll deduction, with before tax dollars, thus lowering your gross pay subject to tax); and 401k plan after three months of service.

At that time you commence employment, you must execute an Employment Letter Agreement which, among other things, will provide that you are an at-will employee, that any and all inventions conceived and works authored by you shall be the property of the company, that you will maintain in strict confidence all company confidential information both during and after your employment, and that for a period of five (5) years after the termination of your employment, you will not compete anywhere with the company in the field of long-range weather forecasting or in the use, translation, sales, marketing, consulting, or customer relations involving computer based systems and programs using long-range weather information. This letter and the Employment Letter Agreement are incorporated into each other.

If these terms are acceptable, please acknowledge acceptance of the terms of employment as set forth above by executing the copy of this letter enclosed herewith and the Employment Letter Agreement which is also enclosed.

Very truly yours,
STRATEGIC WEATHER SERVICES

Christopher P. Cawthon
Christopher P. Cawthon
Executive Vice President

THE ABOVE TERMS ARE ACCEPTED AND APPROVED:

Dated: 8/10, 1999

By: J. K. E.
James K. Egan



Strategic Weather Services

1325 MORRIS DRIVE • WAYNE, PA 19087-5521
(610) 640-9485 • FAX (610) 640-0147

August 3, 1999

Mr. James K. Egan
1628 North Valley Road
Malvern, PA 19355

Dear Jim:

This is the Employment Letter Agreement referred to and incorporated by reference into our Employment Offer and Acceptance letter of August 3, 1999. Our Employment Offer and Acceptance letter of August 3, 1999 is also incorporated by reference into this Employment Letter Agreement.

To make this letter concise and easy to understand, I have used the following convention. You or employee means you, James K. Egan. We or Company means Strategic Weather Services. This agreement is between you and the Company.

We have prepared this employment letter agreement so that you will have a clear understanding before you begin work about your benefits, duties and obligations from and to our Company. If you should have any questions about anything in this letter, please let me know immediately. I can be reached through our Company headquarters in Wayne, PA, at (610) 640-9485. As you know, you must have executed this letter and our Employment Offer and Acceptance letter, of August 3, 1999 before you can start work on August 16, 1999.

From our pre-employment discussions, you know that the Company's business rests on its confidential information used in developing, making and enhancing long-range weather forecasts, and in the long-range weather forecasts that are produced, and in the application of these long-range weather forecasts either manually or via computer systems and software to specific business applications and functions, such as, but not limited to, planning, allocation, replenishment, distribution, and store operations. By long-range weather forecasts, we mean forecasting weather five or more days beyond the day when the forecast is made, and the manual and computer application of these forecasts to specific problems.

The Company's ability to develop, make and enhance long-range weather forecasts is based on the use of very valuable proprietary methods, procedures, techniques, strategies, data, and computer programs and/or systems, which we call Company Confidential Information or Confidential Information. The Company considers all of this Company Confidential Information key to its business, health, growth and future. In order to maintain the trade secret status of this Confidential Information, you must comply with the requirements set out in this letter and in all subsequent requirements established by the Company.

PHILADELPHIA

• OMAHA

• PALM SPRINGS

Mr. James K. Egan
August 3, 1999
Page 2 of 7

For your information, we are a corporation duly formed and licensed under the laws of the Commonwealth of Pennsylvania. We are engaged in the business of developing, making and providing short and long-range weather forecasting and weather related consulting services. Our principal place of business is at 1325 Morris Drive, Wayne, Pennsylvania 19087. Our offices at 610 South Belardo Road, Palm Springs, California are referred to in this letter as the "California Premises."

You reside at 1628 North Valley Road, Malvern, PA 19355

You should also know that the Company (or its predecessor in interest), Irving P. Krick Associates, Inc. and certain other corporations entered into an Asset Purchase Agreement ("Related Agreement") dated March 23, 1990 pursuant to which Company purchased all the assets of those corporation(s).

In your prior employment you have done no short or long-range weather forecasting, nor have you worked with weather in terms of application specific computer programs and/or systems, marketing, sales, consulting, analyzing or marketing research.

We will employ you in a position involving sales, marketing, consulting, and customer relations, regarding our computer based systems and programs using short and long-range weather information. As such, you will be exposed to a considerable amount of the Company Confidential Information. You agree to keep all Company Confidential Information strictly confidential both during and after your employment.

All inventions involving short and long-range weather forecasting including the use, translation, sales, marketing, consulting, and customer relations, involving computer based systems and programs using short and long-range weather information, in any way conceived, made and/or reduced to practice by you during your employment or for one year thereafter shall belong to the Company. Similarly, all works of authorship and copyrights in such works of authorship involving short and long-range weather forecasting including the use, translation, sales, marketing, consulting, and customer relations, involving computer based systems and programs using short and long-range weather information, in any way fixed in any tangible medium of expression by you during your employment or for one year thereafter shall belong to the Company. You will execute assignments conveying such right, title and interest to the Company. You will also cooperate fully with the Company in obtaining patents and copyright registrations on such inventions and works of authorship.

You also agree not to compete with the company anywhere in the world in any aspect of long-range weather forecasting including the use, translation, sales, marketing, consulting, or customer relations, involving computer based systems and programs using long-range weather information for five (5) years after your employment.

Mr. James K. Egan
August 3, 1999
Page 3 of 7

Company engages you as a Vice President, Business Development with such specific authority and obligations as are assigned to you by the Company from time to time. You are an at-will employee.

You shall devote your full working time, energy, skill and experience to the performance of your duties as are redefined by the Company from time to time. During your employment, you shall not engage in any other business.

You, without the express consent of the Board of Directors of Company, shall have no apparent or implied authority to pledge the credit of Company; to bind the Company under any contract, note, mortgage or other agreement outside the ordinary course of Company's business; to release or discharge any debt due Company; or to sell, mortgage, transfer or otherwise dispose of any assets of Company.

Your compensation is set out in my employment offer and acceptance letter of date, which is incorporated into this letter employment agreement and vice versa.

This agreement shall be effective immediately and shall continue for the term of your employment. We shall provide you with fourteen (14) calendar days notice for termination of employment without cause. At our option, upon providing this notice, we can ask you to immediately cease your employment and receive ten (10) paid days of severance pay, based upon your base salary of \$75,000 per year.

Upon an immediate basis, your employment with the Company may be terminated for Cause. "Cause" is defined as:

- (1) The theft, misappropriation or embezzlement of Company's funds or property (tangible or intangible);
- (2) Conviction of a first degree misdemeanor or felony;
- (3) Nonperformance by you of your duties hereunder despite at least two prior written warnings (specifically setting forth in detail the facts constituting the nonperformance being complained of) and reasonable opportunity to correct such deficiencies;
- (4) Repeated and consistent failure of you to render the prescribed number of hours of service on Company's premises or pursuant to its direction;
- (5) Consistent failure to render adequate performance of your duties despite one or more warnings and reasonable opportunity to correct such deficiencies;
- (6) One or more material breaches of the written rules, regulations and/or policies of the Company, gross insubordination or the clear failure of you to conform to accepted business or professional standards.

Mr. James K. Egan
August 3, 1999
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Your employment may also be terminated by your death or Permanent Disability as such is defined below.

For purposes of this Agreement, "Disability" is defined as a physical or a mental condition which prevents you from performing your principal duties.

"Permanent Disability" is defined as a Disability which continues or which in the opinion of a reputable medical doctor will continue, for a period of six (6) months.

In the event of a dispute as to the existence, nature and/or extent of a Disability, or Permanent Disability, Company and you shall jointly select a qualified physician to examine you and make a report thereon. The report of the selected physician shall be binding upon the Company and you. If the Company and you are unable to agree on a physician within five (5) days of receipt of a written request by either party implementing this Paragraph, then each party shall, by written notice to the other within ten (10) days thereafter, name a qualified physician and the two (2) so chosen physicians shall, within five (5) days, select a third qualified physician who shall examine you and make prompt findings on the issue of disability.

The findings of the selected physician shall be final, binding, unappealable and conclusive upon the Company and you. In addition, the findings shall be specifically enforceable or confirmed in a Court of competent jurisdiction. In the event you or the Company fails to name a physician within the time limit prescribed, the other party may name a physician to act for the party so failing.

We expect that you will make a significant contribution to the Company in the area of sales, marketing, consulting, and customer relations regarding our consulting and product development involving computer based systems and programs using short and long-range weather information and enhancing the utility of the short and long-range weather forecasts. We will invest considerable time and effort in bringing you "up to speed" on our proprietary system and methodologies. All of this should help you and the Company in creating and maintaining its competitive edge.

You shall promptly disclose to Company all ideas, processes, concepts, inventions, works of authorship and improvements (enhancements) coming within the scope of the Company's business or relating to any work carried on by the Company or to any problems specifically assigned to you, which are conceived, made, reduced to practice, or fixed in any tangible medium of expression by you alone or with others during your employment and one (1) year thereafter. This shall be done regardless of whether or not such ideas, processes, concepts, inventions, works of authorship and improvements are conceived, made, reduced to practice or fixed in any tangible medium of expression during actual working hours and/or with Company equipment, supplies or resources.

Mr. James K. Egan

August 3, 1999

Page 5 of 7

All such ideas, processes, concepts, inventions, works of authorship and improvements and all intellectual property rights in the same (patent, copyright, trade secret, trademark, and contract) shall be the sole and exclusive property of the Company worldwide. You shall promptly execute any assignments necessary to perfect title thereto.

In the event any such idea, process, concept, invention, work of authorship, or improvement shall be deemed by the Company to be patentable or copyrightable, you shall (at the expense of the Company) assist the Company in obtaining a patent(s) or copyright(s) thereon. You shall also execute all documents and do all things necessary or proper to obtain letters, patent or copyright registration and to vest the Company with full title thereto.

Without diminishing Company's rights as set forth in this letter, you shall be granted due acknowledgment for the part you play in these innovative activities, subject to maintaining strictly confidential the Company's Confidential Information.

Because of the nature of your work in the area of sales, marketing, consulting, and customer relations involving computer based systems and programs using short and long-range weather information and enhancing the utility of the long-range weather forecasts, you will in the course of time acquire valuable information and skill with respect to the business operations of Company and its trade secrets (also called Company Confidential Information in this letter), including by way of illustration but not limitation, knowledge of Company's weather forecasting methods, development and implementation of weather models, computer software programs, formulas, processes, data, customer lists, forms of agreements and contracts used in business operations, strategic plans and advertising and marketing methods, techniques and strategies.

You understand and recognize that the Company will suffer irreparable injury if any Company Confidential Information (trade secrets), as illustrated but not limited to those referred to above, are obtained by any competing person or entity or should you directly or indirectly compete with the Company for its customer's business.

You shall not during employment, directly or indirectly, become engaged in any business in competition with Company's business.

You recognize and acknowledge that the Company's Confidential Information (trade secrets) as referred to above whether or not documented in any form constitutes valuable, special and unique assets of Company's business. You will not, during or after your employment, directly or indirectly divulge or disclose in any fashion any information with regard to such Company Confidential Information (or the documentation thereof) to any person, firm, corporation, association or other entity for any reason or purpose whatsoever. You further covenant that you will not at any time remove or otherwise appropriate any documentation of company Confidential Information from the Company's premises unless specifically approved by Company in advance; such specifically approved removal shall be only for a specified temporary period.

Mr. James K. Egan

August 3, 1999

Page 6 of 7

In further consideration of this agreement and our Employment Offer and Acceptance Letter of August 3, 1999, for a period of five (5) years after the termination of your employment, for any reason what-so-ever, you shall not, anywhere in the world, directly or indirectly, own, manage, operate, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, or control of any business enterprise which engages in developing, using, consulting or providing long-range weather forecasting utilizing a system the same or materially similar to a system developed by Irving P. Krick Associates, Inc. or the Company and/or services and/or which solicits the business of Company's customers.

It is agreed by the Company and you that if any portion of this restrictive covenant is held by a court to be unreasonable, arbitrary or against public policy, the covenant not to compete may be construed to be divisible both as to time and geographical area; and, each month of the specified period shall be deemed to be a separate period of time, and the smallest governmental subdivision in the restricted area (e.g. municipality, township, province, etc.) shall be deemed to be a separate geographical area, so that the maximum lesser period and area shall remain effective so long as the time or area is not determined to be unreasonable, arbitrary or against public policy.

During or subsequent to the termination of your employment by either party for any reason, you shall not contact, solicit or attempt to contact or solicit any person who is employed by Company at the time of such termination of employment for the purpose of inducing them to terminate their employment with Company and/or accept employment with you or any business which employs, directly or indirectly, you, or which you directly or indirectly, owns, manages, operates, consults with, participates in or is connected with in any manner.

Both parties agree that the breach of this restrictive covenant by you will cause irreparable harm and injury to the Company. Both parties agree that the only effective and adequate remedy available to the Company for such breach is by injunctive relief both preliminary and final. In addition, the Company and you agree to the jurisdiction of the equitable powers of the appropriate court to obtain such relief. The parties further agree that the restrictive covenant set forth herein shall be extended for a period of time equal to any period of time during which you are in violation of its provisions.

In the event you should use or reveal to any other person or entity the Company Confidential Information as defined above, such disclosure will be considered a continuing violation on a daily basis for so long a period of time as such Company Confidential Information is made use of by you, or any other person or entity through you.

This agreement shall be binding upon and the benefits shall accrue to the Company and to you, and our respective heirs, administrators, successors and assigns.

Mr. James K. Egan
August 3, 1999
Page 7 of 7

The waiver by the Company of the breach by you of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by you.

This agreement and the Employment Offer and Acceptance Letter of August 3, 1999 contain the entire agreement between you and the Company. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any such change, waiver, modification, construction, extension or discharge is sought.

All of the provisions of this agreement are distinct and severable. If any provisions should, for any reason, be held to be invalid or unenforceable, then the valid and enforceable provisions hereof shall continue in full force and effect.

This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

If you agree with the terms and conditions of this Employment Letter Agreement and the Employment Offer and Acceptance Letter of August 3, 1999, please indicate this by signing and dating both original copies of this letter in the spaces indicated below and both original copies of the August 3, 1999 Employment Offer and Acceptance Letter in the spaces indicated. Return one executed copy of each to me and keep one set for your review and records.

We look forward to a long and beneficial employment relationship.

Sincerely,

STRATEGIC WEATHER SERVICES

Christopher P. Cawthon, SWS
Christopher P. Cawthon
Executive Vice President

THE ABOVE TERMS ARE ACCEPTED AND APPROVED.

Date: 8/10, 1999

By: J. Egan
James K. Egan

CONFIDENTIALITY, ASSIGNMENT OF INVENTIONS AND NON-COMPETITION AGREEMENT

In consideration for my employment with Planalytics, Inc., I agree as follows to this Confidentiality, Assignment of Inventions and Non-Competition Agreement with Planalytics Inc., its subsidiaries, affiliates, and sister companies:

1. Confidential Information.

(a) **Company Information.** I agree at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use (or attempt to use), except for the benefit of the Company, and not to disclose to any person or entity without written authorization of the Board of Directors of the Company, any Confidential Information of the Company. I understand that "Confidential Information" means any Company proprietary or confidential information, technical data, trade secrets or know-how, including, but not limited to, research, product or business plans, products, services, projects, proposals, customer lists and customers (including, but not limited to, customers of the Company on whom I call or with whom I become acquainted during the term of my employment), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, marketing, distribution and sales methods and systems, sales and profit figures, finances and other business information disclosed to me by the Company, either directly or indirectly in writing, orally or by drawings or inspection of documents or other tangible property.

(b) **Former Employer Information.** I agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former employer or other person or entity with whom I have an agreement or duty to keep such information or secrets confidential. I further acknowledge that my employment and contemplated duties as an employee of the Company do not and will not violate or cause me to be in breach of any obligation or covenant made to any former employer, and I will not take any action during my employment with the Company that would be in violation or breach of any legal obligation that I may have to any former employer.

(c) **Third Party Information.** I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person or entity or to use it except as necessary in carrying out my work for the Company, consistent with the Company's agreement with such third party.

(d) **Removal of Confidential Property From The Company's Premises.** I agree that I will not at any time remove or otherwise appropriate any documentation of confidential information from the Company's premises unless specifically approved by the Company in advance for a specified period of time.

3. Inventions.

(a) **Disclosure.** I agree to promptly disclose all Inventions to the Company (or any persons designated by it). I will also promptly disclose to the Company, and the

Company hereby agrees to receive all such disclosures in strict confidence and trust, all other discoveries, designs, inventions, developments, improvements, formulae, processes, techniques, systems, computer programs, know-how or data, whether or not patentable or registrable under copyright or similar statutes, that are made, conceived, learned or reduced to practice by me, either alone or jointly with others, during the period of my employment, and for one (1) year following the termination of my employment, for the purpose of permitting the Company to determine in good faith whether they constitute Inventions. I understand that "Inventions" means any discovery, design, invention, development, improvement, formula, process, technique, system, computer program, know-how or data, whether or not patentable or registrable under copyright or similar statutes, made, conceived, learned or reduced to practice by me, either alone or jointly with others, that is related to or useful in the business of the Company.

(b) Ownership Of Inventions. The Company shall be the sole owner of all Inventions and all patents, copyrights, trademarks and other rights related thereto. I hereby assign to the Company all rights I may have or acquire in such Inventions.

(c) Patents and Copyrights. I will assist the Company in every reasonable way (but at the Company's expense) to obtain, maintain and enforce all patents, copyrights, trademarks and other rights and protections relating to Inventions in any and all countries. To that end, I will sign all documents, supply all information and do all things (including the giving of evidence and testimony) that the Company may consider necessary or desirable.

(d) Continuing Obligation. My obligation to assist the Company in obtaining, maintaining and enforcing patents, copyrights, trademarks and other rights and protections related to Inventions shall continue beyond the termination of my employment with the Company, but the Company shall compensate me at a reasonable rate after my termination for time actually spent by me at the Company's request on such assistance.

(e) Company As Agent. If the Company is unable, after reasonable effort, to secure my signature on any document needed to apply for or prosecute any patent, copyright, trademark or other right or protection relating to an Invention, whether by reason of my physical or mental incapacity or for any other reason whatsoever other than a bona fide objection to such application or prosecution (which shall mean a good faith belief that such application or prosecution is illegal, wrongful, based on misrepresentations or fraud or other similar reason), I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agents and attorneys-in-fact, to act for and on my behalf to execute and file any such application and to do all other lawful acts to further the prosecution and issuance of patents, copyrights, trademarks or similar rights or protections thereon with the same legal force and effect as if executed by me.

(f) Prior Inventions. I represent that I have identified on Item 1 of Exhibit A attached hereto all inventions or improvements relevant to the subject matter of my employment with the Company that have been made, conceived, learned or first reduced to practice by me, alone or jointly with others, prior to my employment with the Company and that I desire to remove from the operation of this Agreement. I represent and warrant that such list is complete. I agree that the Company is under no obligation at any time based on any claim of right on my part because of any listing on Exhibit A. If there is no such list on Exhibit A, I represent that I have made no such inventions or improvements at the time of signing this Agreement.

4. **Documents, Materials and Tangible Property.** All documents, notes, drawings, specifications computer programs, data and other materials of any nature relating in any way to any Confidential Information or the business of the Company which are generated by me or come into my possession from the Company or its consultants or affiliates shall be and remain the exclusive property of the Company. I will not take any of the foregoing, or any reproduction of any of the foregoing, and will return the same to the Company in the event of the termination of my employment for any reason or at such earlier time as requested by the Company.

5. **Conflicting Employment.** I agree that, during my employment with the Company, I will not engage in any other employment, occupation, consulting or other business activity related to the business in which the Company is now involved or becomes involved during my employment, nor will I engage in any other activities that conflict with my obligations to the Company.

6. **Non-Competition And Non-Solicitation.** I acknowledge that I have, and during my employment with the Company I will further develop, specialized knowledge and experience relating to the Company's business, that my reputation and contacts within the industry are considered of great value to the Company, and if any of my knowledge, experience, reputation or contacts are used to compete with the Company, serious harm to the Company may result. Thus, I agree as follows:

(a) **Non-Solicitation.** During my employment by the Company and for a period of one (1) year thereafter, I shall not, unless acting pursuant hereto or with the prior written consent of the Board of Directors of the Company, directly or indirectly, in any capacity (including, without limitation, as owner, partner, shareholder, consultant, agent, employee, officer or director) for the benefit of any Person other than the Company:

(i) solicit business from, or perform services for, any Person that at any time during my employment by the Company is, or within one (1) year prior thereto was, a customer or prospect of the Company or any of its affiliates;

(ii) solicit for employment or in any other fashion hire, or induce to leave the service of the Company or any of its affiliates, any of the employees, agents or representatives of the Company or any of its affiliates.

(b) **Non-Competition.** During my employment with the Company and for a period of one (1) year thereafter, I shall not, unless acting pursuant hereto or with the prior written consent of the Board of Directors of the Company, directly or indirectly, in any capacity (including, without limitation, as owner, partner, shareholder, consultant, agent, employee, officer or director) for the benefit of any Person other than the Company:

(i) own, manage, operate, finance, join, control or participate in the ownership, management, operation, financing or control of, or be connected as an officer, director, employee, partner, principal, agent, representative, consultant or otherwise with any business or enterprise conducted anywhere in the world if such business or enterprise is or plans to be engaged in the development, use, provision of, or consulting with respect to, long-range weather forecasting or any other business in which the Company is engaged at the time of my termination from employment; or

(ii) use or permit my name to be used in connection with any business or enterprise engaged in the development, use, provision of, or consulting with respect to, long-range weather forecasting or any other business in which the Company is engaged at the time of my termination of employment.

(c) Non-Competition. During my employment with the Company and for a period of five (5) years thereafter, I shall not, unless acting pursuant hereto or with the prior written consent of the Board of Directors of the Company, directly or indirectly, in any capacity (including, without limitation, as owner, partner, shareholder, consultant, agent, employee, officer or director) for the benefit of any Person other than the Company:

(i) directly or indirectly, own, manage, operate, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, or control of any business enterprise which engages in developing, using, consulting or providing long-range weather forecasting utilizing a system the same or materially similar to a system developed by Irving P. Krick Associates, Inc. or the Company and/or services and/or which solicits the business of Company's customers.

7. Equitable Relief. I acknowledge that the provisions of this Agreement are, in view of the nature of the business of the Company, reasonable and necessary to protect the legitimate interests of the Company, and that any violation thereof will result in irreparable injury to the Company which will be difficult to assess in terms of monetary damages and for which the Company will have no adequate remedy at law. I also acknowledge that the Company shall be entitled to temporary and permanent injunctive relief, without the necessity of proving actual damages, and to an equitable accounting of all earnings, profits and other benefits arising from any such violation, which rights shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. In the event of any such violation, the Company shall be entitled to commence any action for temporary and permanent injunctive relief and other equitable relief in any court of competent jurisdiction.

8. Employment At Will. I understand that nothing in this Agreement shall be construed to require the Company to continue my employment. I further acknowledge that I shall at all times be an employee-at-will of the Company, and either me or the Company may terminate my employment at any time and for any reason, with or without cause.

9. Miscellaneous.

(a) Choice of Law. This Agreement shall be interpreted and enforced according to the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflicts of law thereof.

(b) Jurisdiction. The parties hereby consent to personal jurisdiction over them of any court sitting in the Commonwealth of Pennsylvania having jurisdiction over the subject matter of any lawsuit arising out of, or pertaining to this Agreement. The parties further agree that venue in any lawsuit arising out of or pertaining to this Agreement shall properly lie in the United States District Court for the Eastern District of Pennsylvania, and/or the Pennsylvania Court of Common Pleas for Chester County, Pennsylvania.

(c) Waiver. The waiver or failure of the Company to enforce any violation or provision of this Agreement shall not constitute a waiver of its rights hereunder with respect to any other violation or provision of this Agreement.

(d) Successorship of Agreement. This Agreement shall inure to the benefit of and be binding upon and enforceable by the heirs, personal representatives, successors and assigns of the parties hereto and may be transferred by the Company to any successor or assigns of the parties hereto and may be transferred by the Company to any successor or assign by merger, consolidation, sale of assets or otherwise. This Agreement shall also inure to the benefit of and be binding upon and enforceable by any subsidiary or affiliate of the Company.

(e) Entire Understanding. This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and shall not be amended or modified except by written instrument duly executed by each of the parties hereto and approved by the Board of Directors of the Company. Section headings are for convenience of reference only and are not a part of this Agreement.

(f) Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable in any jurisdiction, the remainder of this Agreement, and the application of such provision to such person or circumstance in any other jurisdiction or to other persons or circumstances in any other jurisdiction, shall not be affected thereby, and to this end the provisions of this Agreement shall be severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intention that such provision shall be reformed and construed by the court to provide the protected party the maximum protection permissible by law.

I HAVE READ AND UNDERSTOOD THE FOREGOING AGREEMENT, AND I UNDERSTAND THAT BY SIGNING I AM AGREEING TO BE LEGALLY BOUND BY ALL OF THE PROVISIONS OF THIS AGREEMENT.

IN WITNESS WHEREOF, I have executed this Agreement on the 5th day of April, 2001.


Peter C. Klenzle

579 Global Deco/Rew
Wayne PA 14087
Address

Accepted on behalf of
Planalytics, Inc.

By:

Title:

Date: 4/12/01

EXHIBIT A

Planalytics, Inc.
1325 Morris Drive
Suite 201
Wayne, PA 19087

1. The following is a complete list of all inventions or improvements relevant to the subject matter of my employment with Planalytics, Inc. and its affiliates, (the "Company") that have been made, conceived, learned or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

See below:

Additional sheets attached.

No inventions or improvements.

2. The following is a complete list of all agreements which I have executed or by which I am bound which presently or in the future may affect my compliance with the terms of the Confidentiality Agreement between the Company and me or the scope and nature of the duties and responsibilities which may now or in the future be assigned to me by the Company.

See below:

Additional sheets attached.

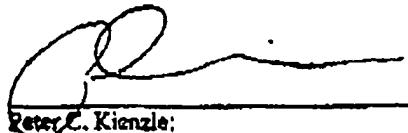
No agreements.

3. I propose to bring to my employment the following materials and documents of a former employer that are not generally available to the public, which materials and documents may be used in my employment pursuant to the express written authorization of my former employer (a copy of which is attached hereto):

See below:

 Additional sheets attached.

No materials.

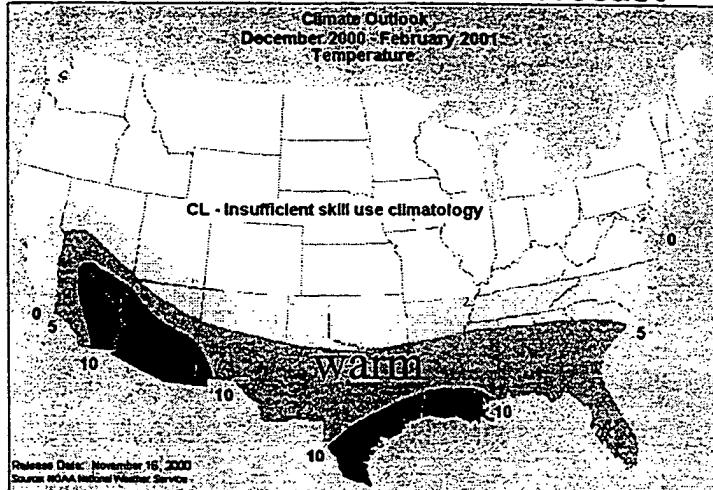

Peter C. Kienzle

Date: 4-6-01

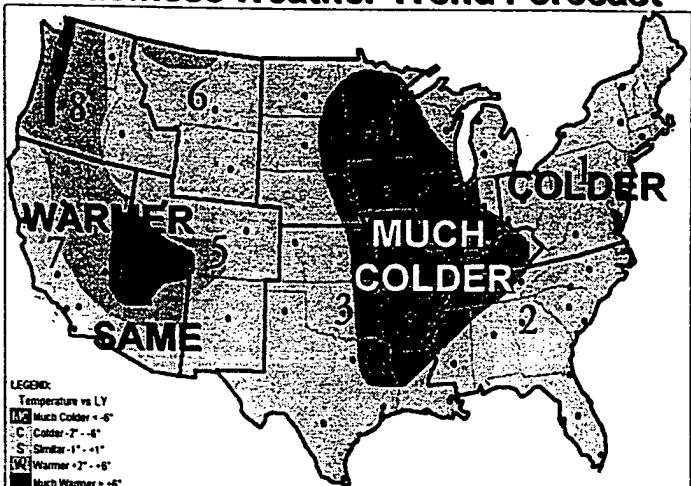
Business Weather® Statistical Verification

Winter 2000-2001 Forecast Comparisons

National Weather Service Forecast

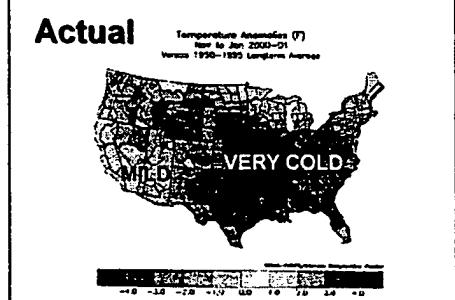


Business Weather Trend Forecast



BUSINESS WEATHER'S Trend forecast predicted a very cold winter of 2000-2001 nine months in advance while the National Weather Service on November 17th, 2000 issued a very warm forecast.

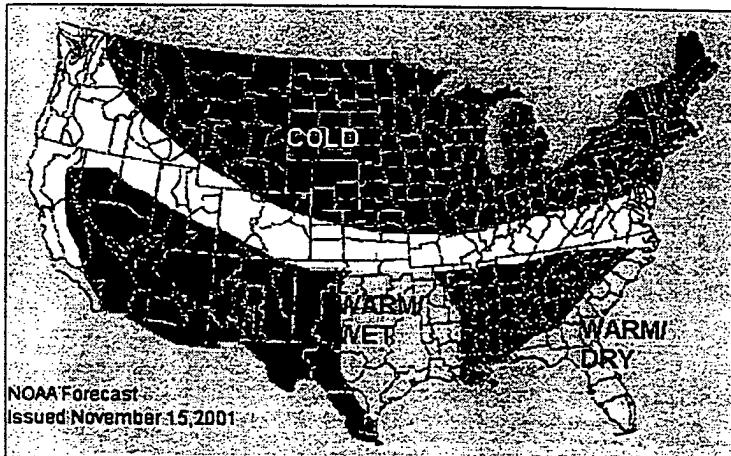
What happened? See the map in the bottom right. One of the coldest winters in decades occurred for the eastern 2/3^{rds} of the country with the only mild to warm conditions limited to the Rocky Mountains and parts of the Northwest. Accuracy 11% NWS, 78% Business Weather!



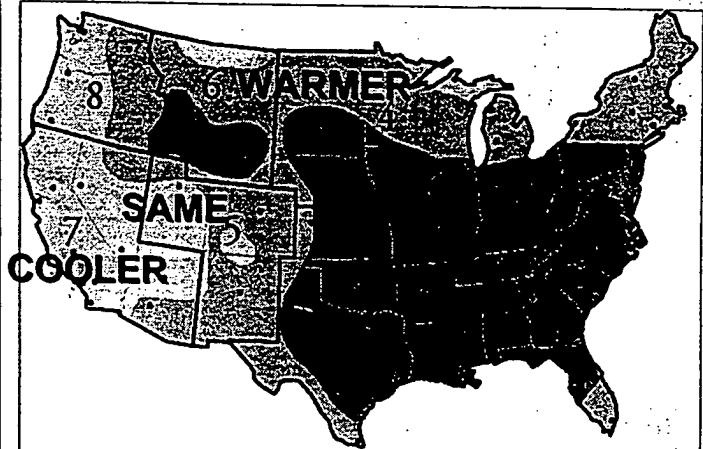
Business Weather® Statistical Verification

Winter 2001-2002 Forecast Comparisons

National Weather Service Forecast



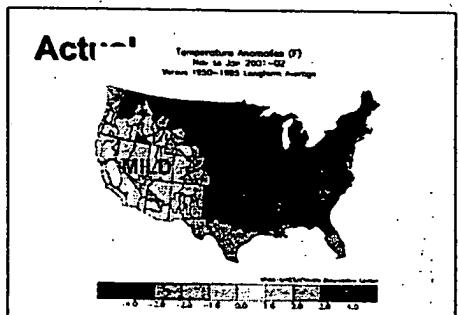
Business Weather Trend Forecast



BUSINESS WEATHER'S Trend forecast predicted a much warmer winter in 2001-2002 while the National Weather Service said on November 15th 2001 "Don't let the recent short-sleeve temperatures fool you: The U.S. remains on track for a repeat of last year's cold winter", NOAA forecasters said.

What happened? One of the warmest winters in history...completely opposite what happened last year as Business Weather's process predicted. NWS accuracy 38%, Business Weather Accuracy 81%!

Business Weather Inc. Phone 610-246-6170 Fax 610-407-0261 e-mail info@bizweather.net

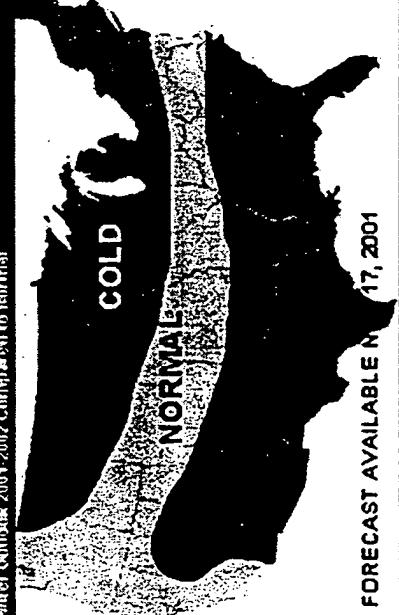


Copyright © 2001 Business Weather Inc.

National Weather Service vs Planalytics Winter Forecast 2001-2002

National Weather Service

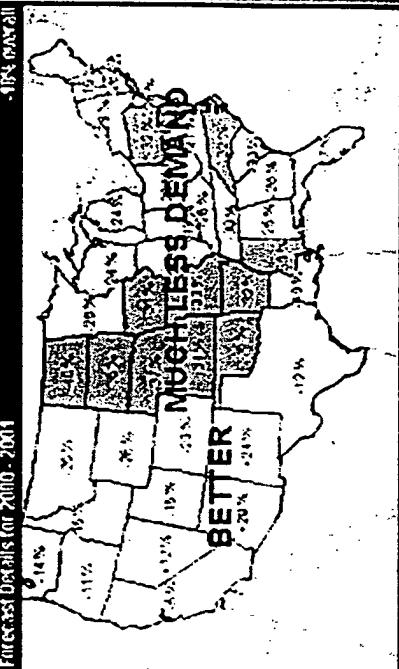
Winter Outlook 2001-2002 Computer-to-Internet



FORECAST AVAILABLE Nov 17, 2001

Planalytics

Forecast Details for 2001-2002



Forecast Details for 2001-2002

ACTUAL

Temperature Anomaly (%)
Nov 18 - Feb 2001 vs 1971-1990 Average

versus 1971-1990 Average



The National Weather Service Forecast issued November 17, 2001 indicated "Don't let the recent short-sleeve temperatures fool you. The U.S. remains on track for a repeat of last winter." NOAA forecasters said Thursday, the NWS still expects the coming winter to bring abrupt swings in temperatures and precipitation, including the potential for Nor'Easters along the East Coast.

Planalytics produced a specific winter impact forecast, issued 10 months prior to the NWS, indicated significantly decreased consumer demand for fall/winter items in the east with the only glimmer of any winter like weather in the southwest Rockies. What actually happened? One of the warmest winters in 107 years and a complete flip from the prior winter (see map to the right for actual temperatures from NWS).

RETAIL

Title: National Weather Service vs Planalytics

FileName / Published Date.

NWS VS PLANALYTICS 2001-2002.ppt /

May 8, 2002

CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made part of the Copyright Office records.

FORM TX

For a Non-Dramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

TX 5-783-928



Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

Sept 03, 2003

1

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

TITLE OF THIS WORK ▼

National Weather Service vs Planalytics

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give Volume ▼ Number ▼ Issue Date ▼ On Page ▼

2

a NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"? Yes No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR Citizen of P. _____
Domiciled in U.S.A. _____

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this author's contribution to the work
of the owner or other
of their creation? Yes No
Title, see detailed
information.

NOTE

Under the law
the author of
a "work made
for hire" is
generally the
employer, not
the employee.
Check "Yes" if
the space
provided gives
the employer
(or other
agent for
whom the work
was prepared)
as "Author" of
a work and
not to the
author for whom
the work
was made.

b NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Text and new compilation of previously published text and weather maps/data

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"? Yes No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR Citizen of P. _____
Domiciled in U.S.A. _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
of the owner or other
of their creation? Yes No
Title, see detailed
information.

c NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR Citizen of P. _____
Domiciled in U.S.A. _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
of the owner or other
of their creation? Yes No
Title, see detailed
information.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3

a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
2002

4
b
COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
Planalytics, Inc.
1325 Morris Drive, Suite 201
Wayne, PA 19087

TRANSMISSION If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

MORE ON BACK ▶ Copyright all original entries (numbers 1-4) on the reverse side of this page
File detailed information. Sign the form on the back.

SEP 03 2003

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

SEP 03 2003

THREE FUND'S RECEIVED

DO NOT TEAR THIS PAGE

Page 1 of 2 pages

EXAMINED BY *JV*

FORM TX

CHECKED BY _____

CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

a No If your answer is Yes, why is another registration being sought? (Check appropriate box.) b

c This is the first published edition of a work previously registered or unpublished form.

d This is the first application submitted by this author as copyright claimant.

e This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number >

Year of Registration >

5

DERIVATIVE WORK OR COMPILED

Reprinting materialIdentify any preexisting work or works that this work is based on or incorporates

Previously published text and weather maps/data.

a 6

See instructions
below complete
this space.

MATERIAL ADDED TO THIS WORK Give a brief, general statement of the material that has been added to this work and to which copyright is claimed.

Text and new compilation of previously published text and weather maps/data.

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of account.
Name Account Number

Morgan Lewis & Bockius LLP

DA064696

a 7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip

Brett I Miller Esq., Morgan, Lewis & Bockius LLP
AIA TMSU 1111 Pennsylvania Avenue, NW
Washington DC 20004

b

Area code and daytime telephone number > 202 739 5846

Patent number > 202 739 3001

Email > bmillier@morganlewis.com

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one >

- Author
 Other copyright claimant
 Owner of exclusive rights
 Authorized agent of Plumbatics, Inc.

Name of author or other copyright claimant, or owner of exclusive rights

Type or printed name and date If this application gives a date of publication in space 2, do not sign and submit it before that date.

David Estornell Chief Technology Officer

Date: 9/3/05

8

Handwriting signature Brett I. Miller

X Brett I. Miller

Certificates
will be
mailed to
window
envelope
to this
address

Name
Brett I. Miller Esq., Morgan, Lewis & Bockius LLP
Name/Address
AIA TMSU, 1111 Pennsylvania Avenue, NW
City/State/Zip
Washington, D.C. 20004

Form 10 Application for Copyright
Copyright Office
U.S. Copyright Office
Washington, D.C. 20559-6000
Telephone 202-707-3000
Fax 202-707-3000
E-mail: copyright@copyright.gov

9

17 U.S.C. § 205(d) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 403, or in any written statement filed in connection with the application shall be fined not more than \$2,500.

May 2005 - 03 000 Year May 2005 © Printed on recycled paper

U.S. Government Printing Office, 2000-404 15020 023



Strategic Weather Services



1325 MORRIS DRIVE • WAYNE, PA 19087
(610) 640-9485 • FAX (610) 640-0147

William E. Kirk
21 Chestnut Ridge Circle
Easton, PA 18042-1466

April 30, 1997

Dear Bill:

This is the Employment Letter Agreement referred to and incorporated by reference into our Employment Offer and Acceptance letter of April 16, 1997. Our Employment Offer and Acceptance letter of April 16, 1997 is also incorporated by reference into this Employment Letter Agreement.

To make this letter concise and easy to understand, I have used the following convention. You or employee means you, William E. Kirk. We or Company means Strategic Weather Services. This agreement is between you and the Company.

We have prepared this employment letter agreement so that you will have a clear understanding before you begin work about your benefits, duties and obligations from and to our Company. If you should have any questions about anything in this letter, please let me know immediately. I can be reached through our Company headquarters in Wayne, PA, (610) 640-9485, or extension 1913. As you know, you must have executed this letter before you can start work on May 5, 1997.

From our pre-employment discussions, you know that the Company's entire business rests on its confidential information used in developing, making and enhancing long-range weather forecasts, and in the long-range weather forecasts that are produced, and in the application of these long-range weather forecasts either manually or via computer systems and software to specific business applications and functions, such as, but not limited to, planning, allocation, replenishment, distribution, and store operations. By long-range weather forecasts, we mean forecasting weather five or more days beyond the day when the forecast is made, and the manual and computer application of these forecasts to specific problems.

PHILADELPHIA

OMAHA

PALM SPRINGS

JUL 17 '03 12:03 P.17

Fax:610-640-0147

PLANALYTICS

William E. Kirk

April 30, 1997

Page Two

The Company's ability to develop, make and enhance long-range weather forecasts is based on the use of very valuable proprietary methods, procedures, techniques, strategies, data, and computer programs and/or systems, which we call Company Confidential Information or Confidential Information. The Company considers all of this Company Confidential Information key to its business, health, growth and future. In order to maintain the trade secret status of this Confidential Information, you must comply with the requirements set out in this letter and in all subsequent requirements established by the Company.

For your information, we are an incorporated company duly formed and licensed under the laws of the Commonwealth of Pennsylvania. We are engaged in the business of developing, making and providing long-range weather forecasting and consulting services. Our principal place of business is at 1325 Morris Drive, Wayne, Pennsylvania 19087. Our offices at 610 South Belardo Road, Palm Springs, California are referred to in this letter as the "California Premises."

You currently reside at 21 Chestnut Ridge Circle, Easton, PA 18042-1466

You should also know that the Company (or its predecessor in interest), Irving P. Krick Associates, Inc. and certain other corporations entered into an Asset Purchase Agreement ("Related Agreement") dated March 23, 1990 pursuant to which Company purchased all the assets of those corporation(s).

In your previous self-employment, you provided forecasts using forecast systems, techniques, tools, computer models, etc. commonly and openly available throughout the public and government meteorology communities used to prepare short-, medium-, and extended-range weather forecasts. You did no long-range weather forecasting using a system the same or materially similar to the forecast system developed by Irving P. Krick Associates, Inc. or techniques and tools unique and proprietary to the Company, nor have you ever worked with the specific type of weather support we provide to our clients in terms of application specific computer programs and/or systems, marketing, sales, consulting, analyzing or marketing research.

We will employ you in a position involving weather services, including product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information. Since you have never done this specific type of product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information, nor have you ever been involved with the Strategic Weather Services computer applications involving weather information, we will teach you our proprietary systems and methodologies through formal training and on-the-job activities and tasks. As such, you will be

William E. Kirk
April 30, 1997
Page Three

exposed to a considerable amount of the Company Confidential Information. You agree to keep all Company Confidential Information strictly confidential both during and after your employment.

All inventions involving long-range weather forecasting including the use, translation, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information, in any way conceived, made and/or reduced to practice by you during your employment or for one year thereafter shall belong to the Company. Similarly, all works of authorship and copyrights in such works of authorship involving long-range weather forecasting including the use, translation, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information, in any way fixed in any tangible medium of expression by you during your employment or for one year thereafter shall belong to the Company. You will execute assignments conveying such right, title and interest to the Company. You will also cooperate fully with the Company in obtaining patents and copyright registrations on such inventions and works of authorship. You also agree not to compete with the company anywhere in the world in any aspect of long-range weather forecasting including the use, translation, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information for five (5) years after your employment.

The Company engages you as a Weather Applications and Production Manager with such specific authority and obligations as are assigned to you by the Company from time to time. You are an at-will employee.

You shall devote your full working time, energy, skill and experience to the performance of your duties as are redefined by the Company from time to time. During your employment, you shall not engage in any other business without approval of the Company.

You, without the express consent of the Board of Directors of Company, shall have no apparent or implied authority to pledge the credit of Company; to bind the Company under any contract, note, mortgage or other agreement outside the ordinary course of Company's business; to release or discharge any debt due Company; or to sell, mortgage, transfer or otherwise dispose of any assets of Company.

Your compensation is set out in my employment offer and acceptance letter of date, which is incorporated into this letter employment agreement and vice versa.

William E. Kirk

April 30, 1997

Page Four

This agreement shall be effective immediately and shall continue for the term of your employment. We shall provide you with fourteen (14) days notice for termination of employment without cause. At our option, upon providing this notice, we can ask you to immediately cease your employment and receive fourteen (14) days of severance pay.

Upon an immediate basis, your employment with the Company may be terminated for Cause. "Cause" is defined as:

- (1) The theft, misappropriation or embezzlement of Company's funds or property (tangible or intangible);
- (2) Conviction of a first degree misdemeanor or felony;
- (3) Nonperformance by you of your duties hereunder despite at least two prior written warnings (specifically setting forth in detail the facts constituting the nonperformance being complained of) and reasonable opportunity to correct such deficiencies;
- (4) Repeated and consistent failure of you to render the prescribed number of hours of service on Company's premises or pursuant to its direction;
- (5) Consistent failure to render adequate performance of your duties despite one or more warnings and reasonable opportunity to correct such deficiencies;
- (6) One or more material breaches of the written rules, regulations and/or policies of the Company, gross insubordination or the clear failure of you to conform to accepted business or professional standards.

Your employment may also be terminated by your death or Permanent Disability as such is defined below.

For purposes of this Agreement, "Disability" is defined as a physical or a mental condition which prevents you from performing your principal duties.

"Permanent Disability" is defined as a Disability which continues or which in the opinion of a reputable medical doctor will continue, for a period of six (6) months.

William E. Kirk
April 30, 1997
Page Five

In the event of a dispute as to the existence, nature and/or extent of a Disability, or Permanent Disability, Company and you shall jointly select a qualified physician to examine you and make a report thereon. The report of the selected physician shall be binding upon the Company and you. If the Company and you are unable to agree on a physician within five (5) days of receipt of a written request by either party implementing this Paragraph, then each party shall, by written notice to the other within ten (10) days thereafter, name a qualified physician and the two (2) so chosen physicians shall, within five (5) days, select a third qualified physician who shall examine you and make prompt findings on the issue of disability.

The findings of the selected physician shall be final, binding, unappealable and conclusive upon the Company and you. In addition, the findings shall be specifically enforceable or confirmed in a Court of competent jurisdiction. In the event you or the Company fails to name a physician within the time limit prescribed, the other party may name a physician to act for the party so failing.

We expect that you will make a significant contribution to the Company in the area of using, translating, product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information and enhancing the utility of the long-range weather forecasts. We will invest considerable time and effort in bringing you "up to speed" on our proprietary system and method. All of this should help you and the Company in creating and maintaining its competitive edge.

You shall promptly disclose to Company all ideas, processes, concepts, inventions, works of authorship and improvements (enhancements) coming within the scope of the Company's business or relating to any work carried on by the Company or to any problems specifically assigned to you, which are conceived, made, reduced to practice, or fixed in any tangible medium of expression by you alone or with others during your employment and one (1) year thereafter. This shall be done regardless of whether or not such ideas, processes, concepts, inventions, works of authorship and improvements are conceived, made, reduced to practice or fixed in any tangible medium of expression during actual working hours and/or with Company equipment, supplies or resources.

All such ideas, processes, concepts, inventions, works of authorship and improvements and all intellectual property rights in the same (patent, copyright, trade secret, trademark, contract) shall be the sole and exclusive property of the Company worldwide. You shall promptly execute any assignments necessary to perfect title thereto.

William E. Kirk
April 30, 1997
Page Six

In the event any such idea, process, concept, invention, work of authorship, or improvement shall be deemed by the Company to be patentable or copyrightable, you shall (at the expense of the Company) assist the Company in obtaining a patent(s) or copyright(s) thereon. You shall also execute all documents and do all things necessary or proper to obtain letters, patent or copyright registration and to vest the Company with full title thereto.

Without diminishing Company's rights as set forth in this letter, you shall be granted due acknowledgment for the part you play in these innovative activities, subject to maintaining strictly confidential the Company's Confidential Information.

Because of the nature of your work in the area of client servicing including product installation, implementation, and training, client support, product development, market analysis, and consulting involving computer based systems and programs using long-range weather information and enhancing the utility of the long-range weather forecasts, you will in the course of time acquire valuable information and skill with respect to the business operations of Company and its trade secrets (also called Company Confidential Information in this letter), including by way of illustration but not limitation, knowledge of Company's weather forecasting methods, development and implementation of weather models, computer software programs, formulas, processes, data, customer lists, forms of agreements and contracts used in business operations, strategic plans and advertising and marketing methods, techniques and strategies.

You understand and recognize that the Company will suffer irreparable injury if any Company Confidential Information (trade secrets), as illustrated but not limited to those referred to above, are obtained by any competing person or entity or should you directly or indirectly compete with the Company for its customer's business.

You shall not during employment, directly or indirectly, become engaged in any business in competition with Company's business.

You recognize and acknowledge that the Company's Confidential Information (trade secrets) as referred to above whether or not documented in any form constitutes valuable, special and unique assets of Company's business. You will not, during or after your employment, directly or indirectly divulge or disclose in any fashion any information with regard to such Company Confidential Information (or the documentation thereof) to any person, firm, corporation, association or other entity for any reason or purpose whatsoever. You further covenant that you will not at any time remove or otherwise appropriate any documentation of company Confidential Information from the Company's premises unless specifically approved by Company in advance; such specifically approved removal shall be only for a specified temporary period.

William E. Kirk
April 30, 1997
Page Seven

In further consideration of this agreement and our Employment Offer and Acceptance Letter of April 16, 1997, for a period of five (5) years after the termination of your employment, for any reason what-so-ever, you shall not, anywhere in the world, directly or indirectly, own, manage, operate, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, or control of any business enterprise which engages in developing, using, consulting or providing long-range weather forecasting utilizing a system the same or materially similar to a system developed by Irving P. Krick Associates, Inc. or the Company and/or services and/or which solicits the business of Company's customers.

It is agreed by the Company and you that if any portion of this restrictive covenant is held by a court to be unreasonable, arbitrary or against public policy, the covenant not to compete may be construed to be divisible both as to time and geographical area; and, each month of the specified period shall be deemed to be a separate period of time, and the smallest governmental subdivision in the restricted area (e.g. municipality, township, province, etc.) shall be deemed to be a separate geographical area, so that the maximum lesser period and area shall remain effective so long as the time or area is not determined to be unreasonable, arbitrary or against public policy.

During or subsequent to the termination of your employment by either party for any reason, you shall not contact, solicit or attempt to contact or solicit any person who is employed by Company at the time of such termination of employment for the purpose of inducing them to terminate their employment with Company and/or accept employment with you or any business which employs, directly or indirectly, you, or which you directly or indirectly, owns, manages, operates, consults with, participates in or is connected with in any manner.

Both parties agree that the breach of this restrictive covenant by you will cause irreparable harm and injury to the Company. Both parties agree that the only effective and adequate remedy available to the Company for such breach is by injunctive relief both preliminary and final. In addition, the Company and you agree to the jurisdiction of the equitable powers of the appropriate court to obtain such relief. The parties further agree that the restrictive covenant set forth herein shall be extended for a period of time equal to any period of time during which you are in violation of its provisions.

In the event you should use or reveal to any other person or entity the Company Confidential Information as defined above, such disclosure will be considered a continuing violation on a daily basis for so long a period of time as such Company Confidential Information is made use of by you, or any other person or entity through you.

This agreement shall be binding upon and the benefits shall accrue to the Company and to you, and our respective heirs, administrators, successors and assigns.

William E. Kirk
April 30, 1997
Page Eight

The waiver by the Company of the breach by you of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by you.

This agreement and the Employment Offer and Acceptance Letter of April 16, 1997, contain the entire agreement between you and the Company. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any such change, waiver, modification, construction, extension or discharge is sought.

All of the provisions of this agreement are distinct and severable. If any provisions should, for any reason, be held to be invalid or unenforceable, then the valid and enforceable provisions hereof shall continue in full force and effect.

This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

If you agree with the terms and conditions of this Employment Letter Agreement and the Employment Offer and Acceptance Letter of April 16, 1997, please indicate this by signing and dating both original copies of this letter in the spaces indicated below. Return one executed copy to me and keep one set for your review and records.

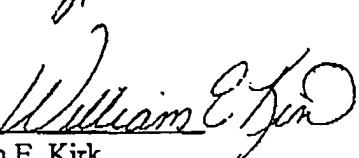
We look forward to a long and beneficial employment relationship. I look forward to seeing you soon.

Sincerely,

STRATEGIC WEATHER SERVICES


WILLIAM S. WEAVING, Vice President
Weather Services

THE ABOVE TERMS ARE ACCEPTED AND APPROVED,
Date: May 2, 1997

By: 
William E. Kirk